This review examines the literature of Aboriginal governance of the last three decades, identifying key documents as well as key themes and issues emerging from the documentation. The review focuses primarily but not exclusively on literature prepared by Aboriginal writers. The study identifies key public policy issues arising from the re-emergence of Aboriginal governments and areas where further research is needed to guide public policy makers.

Ce bilan examine la littérature ayant trait à la gérance autochtone au cours des trois dernières décennies, identifiant les documents clés ainsi que les sujets et problèmes majeurs émergeant de cette documentation. L’étude identifie des problèmes d’ordre administratifs résultant de la recrudescence de gouvernements autochtones et de situations où une recherche plus approfondie s’avère nécessaire afin d’encadrer ses dirigeants.
**Introduction**

The Government of Canada in 1969 proposed a new Indian policy. Commonly referred to as the White Paper, its single goal was the legislative termination of Indians as a distinct legal group within Canada. Grounded in the thinking of principles of equality and equity of Just Society, the policy proposed a way forward that would see Indians become equal to all other citizens of the country. The government proposed that Indians would no longer have a special legal status defined by the Indian Act, Indian reserves would be dissolved, treaties would be interpreted narrowly and federal responsibility for Indians would be delegated to provinces, among other measures. The government argued that the legal status of Indians kept them from participating effectively in Canadian society.

Less than three decades later, in July 1995, the Minister of Indian and Northern Affairs, The Honorable Ron Irwin and the Federal Interlocutor for Métis and Non-Status Indians, The Honorable Anne McLellan announced the recognition of Aboriginal Self-Government “as an existing Aboriginal right under section 35 of the Constitution Act, 1982. It recognizes as well, that the inherent right may find expression in treaties and in the context of the Crowns' relationship with treaty First Nations.” The Inherent Right Policy (IRP) stated that “the inherent right is based on the view that the Aboriginal people of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.” Finally, the IRP indicated that “Negotiations... (as opposed to litigation)...between governments and Aboriginal peoples are clearly the most practical and effective way to implement the inherent right of self-government” (Canada 1995).

A world of difference exists between the policy statements in 1969 and 1995. In the space of one generation Canada’s official policy aimed at the termination of the special legal status for Indian people gave way to a policy of recognition of Aboriginal self government as an inherent right contained within Canada’s Constitution. In some ways this should have not been an overly surprising turn of events for the White Paper stated that its proposed changes resulted from the work of “A forceful and articulate Indian leadership (which) has developed to express the aspirations and needs of the Indian community” (Canada, 1969). Aboriginal leaders in Canada have a long history of political negotiations with other governments. An intense period of political activity of lobbying, advocacy, coalition building, protest, research and bargaining with federal officials followed the tabling of the White Paper. This activity
influenced the fundamental shift in policy direction. With this background in mind, this essay examines the literature of Aboriginal governance of the three decades starting in 1969 including the research work of the Royal Commission on Aboriginal Peoples (RCAP 1996). The review focuses primarily but not exclusively on literature prepared by Aboriginal writers.

The essay consists of six sections. The first part examines the events of the 1960s and '70s; primarily the White Paper of 1969 and how these events influenced the emerging Aboriginal philosophy pertaining to Aboriginal self-government, in effect setting the context for the literature that emerges. The second part examines the literature of evolution of grassroots and Aboriginal organization guidance of self-governance from the 1970s. Part three looks at the literature produced during the three rounds/periods of constitutional discussions in the 1980s. Part four examines the difference between how Aboriginal leaders and the Canadian government understands self-government at the same time both sides are increasingly engaging one another in negotiations. The final section investigates issues peripheral to the self-government movement but which require explication, such as how recent court cases affect the mechanizations of self-government. Section six presents our conclusions.

This review is an attempt to identify major themes in Aboriginal political thought and to synthesize the issues that require further examination and discussion for public policy makers. In this sense, it is an attempt to capture Aboriginal thought about Aboriginal government as it evolved over the last three decades.

**Genesis of the Modern Aboriginal Self-Government Movement**

Since the early 1970s, Aboriginal peoples have been advocating for increased capacities for self-determination and more recently for self-government. Over the last two decades in particular this desire has been articulated in an ongoing series of papers and proposals prepared by Aboriginal leaders and organizations as well as developments in organizations and communities. This literature contains a record of the themes and issues confronting public policy makers in both newly re-emerging Aboriginal governments and the Canadian Federal Government.

It appears that the most significant episodes in the history of Aboriginal self-government in Canada have taken place at the negotiations table. The majority of work is being produced by legal scholars and utilized to search out constitutional space for self-governing entities (Cairns 2000: 175). Macklem (1993) notes, "Canadian academic scholarship has
been as creative as its American counterpart in providing arguments for the creation of constitutional spaces in which Indian forms of government can take root and flourish.” There does, however, appear to be a significant lack of attention paid by academics to what is occurring beyond the negotiating table. Most written work at this point is steeped in legalese or constitutional politics as writers debate within the pages of contemporary journals what they believe to be the most advantageous path for Aboriginal people to follow to achieve self-government and self-determination. There is little literature that focuses on the nuts and bolts of Aboriginal government (possible models, powers, machinery of government, elections, etc.) and there are few detailed analyses of what has been achieved to date, either at specific sites in overview.

Aboriginal self-government is consistently presented as a nebulous yet all inclusive concept that fails to respect the cultural complexity of individual communities, a stance that requires the development of specific processes to reconcile these differences (Long & Chiste 1994; Scott 1993; Slattery 1994; Lindau & Cook 2000; Cyr 2001). Sorely missing are nimble critiques of modern self-government agreements and how these academics and community leaders see contemporary Aboriginal self-governance evolving, especially in light of the fact that contemporary Canadian legislation and regulations do not allow for Aboriginal self-government or self-management to occur (Bartlett 1987). In short, “Political self-sufficiency means, at its most basic level, the ability to set goals and to act on them without seeking permission from others something that “Canada has consistently denied...to Aboriginal nations” (Asch 1992: 50).

Yet somewhat curiously, despite the attention being paid to the concept of self-government, a clear-cut definition eludes us (Weaver 1984). This however did not stall the progress toward self-government in the 1990s. Aboriginal people at that point began “challenging Canada to rationalize its exercise of power over them. In so doing, they are also arguing that this status allows—indeed requires—them to participate in the design of those institutions which exercise political power in Canada” (Chartrand 1993: 238). First Nations were now clearly taking action to determine what was needed prior to structural forms of self-government coming to be. During this period, federal recognition of self-governing authority, the creation and recognition of rights at the self-governing level, and an economic base were viewed as essential components of self-government (Isaac 1991b).

A tremendous amount of time and effort, for instance, has since been spent on the general mechanics of self-government (Brown 1996; Cowie 1987; Gibbins 1986; Green 1997; Hawkes & Peters 1986; Hogg &


There has even been a fair amount of literature produced in comparing the United States and Canadian situations (e.g. Barsh 1996; Ebona 1984; Getches 1988; Kickingbird 1984), or adding an American flavour to the debate (Churchill 1992, Cornell et al. 1999) in addition to Métis self-government (e.g. Bell 1999; Chartier 1999, 1996; Manitoba Métis Federation 1996) and Nunavut governance (e.g. Dacks 1996; Hicks & White 2000; Kusugak 2000; Marecic 2000).


Yet in the year 2004 we seem no closer to defining what self-government is let alone what its place within the Canadian political superstructure is but we do, as a result of the literature, have a grasp of some of the
issues that are confronting public policy makers.

At the same time, Aboriginal people have always argued for self-determination for their communities. The policy proposals of the federal government in the 1960s culminating in the 1969 White Paper helped to translate the movement for increased self-determination to a movement for self-government. Both movements have been based upon a foundation of Indigenous knowledge as Aboriginal peoples have increasingly argued for cultural survival and the development of political relationships with Canada that are based upon Aboriginal political ideas. Native community leaders in the 1970s argued for the development of a contemporary form of self-government that was rooted in traditional philosophies that guided the governance process, theories which informed the creation of what has come to be recognized in Canada as Aboriginal self-government. As the agenda developed, the leadership for the movement shifted from community to Aboriginal political organizations and the federal government and finally to usurpation by the federal government who now determine the agenda and infrequently ask for community input.

The White Paper 1969

Prior to engaging in a critical discussion of the genesis of Aboriginal self-government, a brief history of events leading up to the 1970s when the evolution of self-government firmly takes root requires exploration. Beginning in 1960, the John Diefenbaker-led federal government extended the franchise and full citizenship to all Indian people in Canada without abolishing Indian status. Although this was viewed as a minor concession and received little fanfare in the Indian community, for the first time, Indian people had the right to vote in all provincial and federal elections, a coup as far as Canadian politicians were concerned.

Ever cognizant that the integration of Native people into the greater Canadian society was progressing all too slowly, granting the franchise was viewed as one method of accelerating the assimilation process. A joint parliamentary committee struck in 1961 concluded that Indians were still viewed as a racial minority and that the time was deemed proper for Indian people to “assume the responsibility and accept the benefit of full participation as Canadian citizens. Your committee has kept this in mind in presenting its recommendations which are designed to provide sufficient flexibility to meet the varying stages of development of the Indians during the transition period” (Canada 1961: 605).

At the same time Parliament was attempting to coerce assimilation, the Canadian public, fuelled by media reports and extensive (for the time) press coverage of Indian issues, became critical of what was per-
ceived as the government’s ‘benign neglect’ of Indians, in particular their relatively poor socio-economic and living conditions. In response, a number of studies were commissioned, which included the Hawthorn Report in 1963. The committee that comprised the research team, led by University of British Columbia sociologist Harry Hawthorn, consisted of academics believed to fully understand the issues facing Indians in Canada. What was innovative was how Hawthorn engaged community leaders during the data collection stage as commissioners travelled to a number of Indian communities in Canada to investigate the social, educational and economic conditions (Dickason 1994: 384; see also Cairns 2000).

It appears in retrospect that the Hawthorn Committee was struck simply to assuage the public’s concern regarding the plight of the country’s Native population. Despite the seemingly progressive measure taken in striking the commission, official attitudes of the period appear, at best, indifferent toward Indian peoples and their situation. The 1966 Report of the Advisory Council on the Development of Government in the Northwest Territories, for instance, stated, “It is not conceivable that the central government would convey title in the mineral and petroleum resources of one-third of the land mass of Canada to a government of less than 0.2% of the total Canadian population, three-fifths of whom are Indigenous peoples who, however great their potential, are at the present time politically unsophisticated and economically depressed.” (148)

The Hawthorn report rejected assimilation as a certainty, proposing instead the concept of “citizens plus” to further emphasize that Indians should benefit from Canadian citizenship while also maintaining those rights guaranteed as a result of status and treaty arrangements. In short, they were now to be included as “charter members of the Canadian community” (Cairns 2000). The commissioners stressed “a common citizenship as well as the reinforcement of difference” (Cairns 2000: 8). Despite the Hawthorn Report’s innovative nature and ground-breaking recommendations, Pierre Trudeau’s Liberal government upon its ascension to power in 1968 arbitrarily dismissed the report. In fact, Trudeau opposed the direction Hawthorn had charted and in 1969, the Liberal government released its Statement of Indian Policy, now commonly called the White Paper. This policy paper clearly indicated that the government sought to abandon its fiduciary responsibility for Native peoples and devolve social services and programs to the provinces once Indians were fully recognized as citizens like other Canadians.

The White Paper has been viewed by some as the government’s response to the threat of the American Indian Movement spreading into
Whether or not the move was motivated by a fear of Indian uprisings or to simply appease those who complained of the costs involved in managing Indian affairs, the government cleverly veiled its motivations in the language of equality, claiming its goal was to “enable Indian people to be free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians” (Canada 1969: 3). In fact, the government was seeking to offload its federal responsibilities by devolving bureaucratic control over social programs to the provinces (e.g. Brizinski 1993).

The White Paper went even further, proposing that programs and services be transferred to provincial jurisdiction and delivered accordingly. This would require the federal government to effectively distance itself from previous treaty responsibilities and obligations. In all, it was formally suggested that programs should not be delivered by agencies designed to serve “particular groups, especially not to groups that are identified ethnically” which also included the gradual of federal expenditures to the provinces as the provincial governments moved toward assuming full responsibility for providing these services (Boldt & Long 1988).

Indian leaders were shocked to discover that the White Paper called for the end to the separate legal status for Indian people. The Liberal government argued that it was this status and the resulting policies that “kept the Indian people apart from and behind other Canadians” and that this “separate road cannot lead to full participation, to better equality in practice as well as theory” (Canada 1969: 5). All references to special and separate status of Indians were to be removed from the Constitution to promote equality among Canadian citizens. Epitomizing this special status was special consideration over land and title that resulted from treaty negotiations (i.e. reserves), and provisions would be made that would enable Indians to gain control and acquire title to these lands in addition to determining who would share in its ownership.

The Indian Act of 1876 was to be repealed, as this was viewed as the source of these ‘special’ rights, a move that would immediately be followed by the formal dismantling of the Department of Indian Affairs and the appointment of a commissioner to consult with Indians to recommend procedures to satisfy their claims. In short, a process of “discussion, consultation and negotiation with the Indian people—individuals, bands and associations—and with provincial governments” was outlined (Canada 1969: 6).

For the first time a modern attempt was being made to consolidate all Canadian Indian policy, including the Victorian treaties into one document. In particular, the government’s position on Indian lands and claims
was made explicit, as was the notion that the treaties contained only “limited and minimal promises” that had in most cases been fulfilled. As the White Paper outlined, Indians who clung to them as vestiges of the past by and large misunderstood treaties. In the view of the Liberal government of the day, it was time for Indian people to assume the responsibilities of citizens, equal with all others and move away from a regime of protections and special rights which isolated them and delayed their progress.

**Indian Reaction to the White Paper**

The Indian community rallied fiercely against the White Paper proposals arguing that they had rights emanating from the treaties in addition to having the rights as Canadians. They were in fact citizens plus. Following a brief but vocal period of Native leaders chastising Trudeau’s government for its perceived lack of understanding, the first written response to the White Paper came from the Indian Chiefs of Alberta, who were at the time attempting to resolve difficulties posed by the ethnic and linguistic discreteness of bands, highly localized band identities, and the geographical separation of reserves (Dyck 1983). Their statement, entitled *Citizens Plus*, came to be known as the Red Paper, condemned the government for its lack of vision while simultaneously employing the Hawthorn Report to repudiate the government’s proposed changes (ICA 1970: 4). *Citizens Plus* presented an Indian political vision of the nature of the relationship between Indians and the government of Canada.

The Preamble to the Red Paper states: “To Us who are Treaty Indians there is nothing more important than our Treaties, our lands and the well-being of our future generation.” The statement also argues for the continuation of Indian status, saying that it is essential for justice; for continuation of Indians as Indians: “The only way to maintain our culture is for us to remain as Indians. To preserve our culture it is necessary to preserve our status, rights, lands and traditions. Our treaties are the basis of our rights....” The intent and spirit of the treaties must be our guide, not the precise letter of a foreign language.

On Indian lands, it says: “The Indians are the beneficial (actual) owners of the lands. The legal title has been held for us by the Crown to prevent the sale and breaking up of our land. We are opposed to any system of allotment that would give individuals ownership with rights to sell. On services: The federal government is bound by the BNA Act...to accept legislative responsibility for Indians and Indian Lands. In exchange for the lands...the treaties ensure the following benefits:

a. to have and to hold certain lands called “reserves” for the sole use
and benefit of the Indian people forever and assistance in the social, economic, and cultural development of the reserves;
b. the provision of health services...at the expense of the Federal government;
c. the provision of education of all types and levels to all Indian people;
d. the right of the Indian people to hunt, trap and fish for their livelihood free of governmental interference and regulation and subject only to the proviso that the exercise of this right must not interfere with the use and enjoyment of private property.

The Red Paper sets out the basic political philosophy, which is to guide the development of Aboriginal governance over the next thirty years. It is based upon an Indigenous notion of reciprocity and respect: we give you these lands in return for these rights and guarantees and services. There promises of reciprocity are set out in treaties.

A meeting between Indian leaders and Prime Minister Trudeau followed. The meeting was to propose a new and more open relationship between the federal government and the country’s Indian population as well as to formally declare the Red Paper as the official Indian response to the government’s policy statement. Indian bands represented by treaty clearly stated (and continue to claim) that the treaties were the basis for their relationship with Canada and this is where their rights as Indians emanate. As treaty signatories, it was the leaders claimed that as a result of Canada interacting, negotiating and signing treaties with their past leaders, the federal government identified these groups as sovereign nations. For instance, the Indian Chiefs of Alberta reacted to the federal view of treaties, stating, “The government must admit its mistakes and recognize that the treaties are historical, moral and legal obligations. The redmen signed them in good faith, and lived up to the treaties. The treaties were solemn agreements. Indian lands were exchanged for the promises of the Indian Commissioners who represented the Queen.... The intent and spirit of the treaties must be our guide, not the precise letter of a foreign language. Treaties that run forever must have room for the changes and conditions of life” (7-8).

The Union of British Columbia Indian Chiefs issued a response, *A Declaration of Indian Rights* in the same year; and in 1971, the Association of Iroquois and Allied Indians presented their Position Paper. They rejected all that had been proposed and more importantly, set out their own vision of their place in Canadian society and the steps that needed to be taken to move forward. That vision is captured best by the 1971 Manitoba Indian Brotherhood response: *Whabung: Our Tomorrows*.

The Manitoba Chiefs said, “The Indian Tribes of Manitoba are com-
mitted to the belief that our rights, both Aboriginal and treaty, emanate from our sovereignty as a nation of people. Our relationships with the state have their roots in negotiation between two sovereign peoples. The Indian people enjoy special status conferred by recognition of our historic title that cannot be impaired, altered or compromised by federal-provincial collusion or consent.” *Whabung* also called for a comprehensive approach to development of Indian communities, both as an economy and as a community central to Indian life. It called for development not to proceed in bits and pieces but according to a comprehensive plan on several fronts.

There were three elements to this strategy:

1. A plan to help individuals and communities recover from the pathological consequences of poverty and powerlessness. This means a focus on individual and community health and healing. Adequate health services and community infrastructures were needed for this task.
2. A plan for Indian people to protect their interests in lands and resources.
3. A concerted effort at human resource and cultural development.

The MIB plan had at its heart the idea that if change were to lead to increased self-sufficiency, it ought to be directed by Indian people themselves, so that Indians could consider both individual and communal interests. This provides us with the first indication of what policy directions Indian people would pursue to achieve stronger, more self-reliant communities. The authors of *Whabung* took it a step further, proclaiming “In developing new methods of response and community involvement it is imperative that we, both Indian and Government, recognize that economic, social, and educational development are synonymous, and thus must be dealt with as a ‘total’ approach rather than in parts. The practice of program development in segments, in isolation as between its parts, inhibits if not precludes, effective utilization of all resources in the concentrated effort required to support economic, social and educational developments. Furthermore, “The transition from paternalism to community self-sufficiency may be long and will require significant support from the state, however, we would emphasize that state support should not be such that the government continues to do for us, that which we want to do for ourselves.”

This statement echoes the Hawthorn Report, especially its call for a comprehensive approach to development. It did however take an additional step by further emphasizing reserve economic development as central to Indian life. It called for development to proceed according to a
comprehensive plan. At the heart of these suggestions is the concept that change could lead to self-sufficiency only if Native people direct this change so that both individual and community interests are taken into consideration. This would require governments to surrender some political power and Native people to embrace certain elements of Canadian culture.

It is apparent that the direction Native organizations of the early 1970s were taking was the path towards what is now recognized as self-governance. By 1972, the National Indian Brotherhood (NIB) had become the pre-eminent Native organization in Canada and released a position paper entitled *Indian Control of Indian Education*. Once again extolling the theme that Indian people could govern aspects of their lives that current government services were unable to effectively deliver, the NIB compiled all provincial and territorial organizations' reports or statements on education and then organized an education workshop to discuss the issues.

Following this event, the NIB presented the Minister of Indian Affairs and Northern Development with their policy document, which outlined that the education of Native youth was the sole responsibility of Native adults. Native children needed to develop a value system that was consistent with Indian culture, an approach that was lacking in non-Native schools. The NIB claimed this resulted in high incidences of withdrawal and failure. The NIB also stressed that parental responsibility and local control of education was the only way to alleviate this situation.

The NIB report and the accompanying conclusions clearly predate Canada's current devolution policy or the transfer of responsibility of services to the reserve level. The NIB believed that the federal government should take the steps required to transfer the authority of funds allotted for Indian education to the bands. Upon transfer, the bands would then determine how the money was to be spent. There was concern at the time that upwards of 60 per cent of Native children enrolled in provincial or territorial schools were inadequately represented by contemporary curriculum and that much of what was being taught to those same children was culturally irrelevant. The NIB recommended that preschool and kindergarten programs be implemented to teach the second language in which the curriculum was to be taught to help strengthen the child's image as an Indian. It was also deemed necessary to employ Native teachers and counsellors to properly convey all the teachings, cultural and strictly academic, to the children.

It was perceived that this process of devolution would require input from a variety of sources, including that of parents, teachers, and pupils to aid in program development. It was suggested that current educa-
tional facilities be upgraded and that high schools and vocational schools be established on reserves. In all, the key recommendation was to have Indian education reflect Indian values, and the primary method of attaining this goal was to control (or govern) the process at the reserve level, a process begun three decades ago that persists into the new millennium (Calliou 1999). The report of the Royal Commission on Aboriginal Peoples (1996 vol. 3) recently stated that “Federal, provincial and territorial governments act promptly to acknowledge that education is a core area for the exercise of Aboriginal self-government” (444).

The Calder Decision, 1973

Despite the prolific rate at which reports and position papers were being produced by Native organizations in the early 1970s, the government still appeared intent on systematically ignoring Aboriginal claims to distinctive rights, including the right to self-government. In 1973, a decision by the Supreme Court of Canada in the Nisga’a litigation would alter the political climate in regards to Aboriginal self-government in Canada. In the Calder decision, as it came to be known, six of the seven Supreme Court Justices determined that Aboriginal rights, rights that were not exclusively outlined in the Royal Proclamation of 1763, were in fact pre-existing, confirming that a separate system of Aboriginal rights did exist, albeit relegated to a lesser position in relation to western society (Dockstator 1993: 151).

Notwithstanding Calder’s implications, according to former Grand Chief of the Assembly of First Nations Ovide Mercredi, the Royal Proclamation of 1763 “did not create Aboriginal rights—it recognized them as pre-existing” (Mercredi & Turpel 1994: 31; Clark 1990). John Borrows recently argued that the Royal Proclamation should be viewed as a treaty due to its ratification by both settlers and First Nations in 1764 at Niagara, an argument that echoes the position taken by many treaty Nations during this first period in the evolution of self-government (Borrows 1997: 161). A confusing decision to be certain, in many cases it took consultation with lawyers prior to any determination of success or failure being announced (Manuel & Posluns 1974: 223).

Although the government believed prior to Calder that Aboriginal rights were at best spurious, this judgement entrenched Aboriginal rights within the country’s political psyche not to mention the law, which was followed by the initiation of the lands claims process, as it still exists. It also forced the government to accept the position expressed in the Red Paper and Whabung that not only did Aboriginal rights exist, but that these rights in certain cases entailed self-government.

The court in Calder was specific in its assessment that prior to the
encroachment of settlers onto Native territories that “Indians were there, organized in societies occupying the land as their forefathers had for centuries” (Calder 1973: 156). As such, the court’s specific objective was to illustrate that this “is what Indian title means and it does not help one in the solution of this problem to call it a ‘personal’ or ‘usufructary’ right” (156). Previously Canada had utilized four arguments to defend its sovereignty which included: majority rule, in which case number of settlers outnumber Native people and therefore attain an unchallengeable sovereign status; that original Aboriginal sovereignty has been lost or diluted through negotiations or court cases through the years; the land was ceded by Native people, who voluntarily extinguished their title; and through affirmation, or the continued internal recognition of Canadian sovereignty which in the end perpetuates sovereignty (Asch 2000).

The purpose of Calder from the court’s point of view was to develop an analytical starting point to determine the nature of Aboriginal rights, although these words closely reflect those of American jurist John Marshall, who wrote in the early part of the nineteenth century, “America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of the rest of the world, having institutions of their own, and governing themselves by their own laws” (quoted in Calder 1973: 195). There was specific recognition of Indian nations as being previously self-governing. And, in light of the fact that Aboriginal rights are now recognized by the courts, it was not an unexpected leap to equate Aboriginal rights with the right to govern oneself.

The Calder decision represents the turning point in Canadian/Native relations and the quest for self-governance would take on a new appearance following the Supreme Court’s pronouncement. Moreover, Michael Asch stated that this case forced the government to reverse its policy that in 1969 was assimilationist in doctrine and which also failed to recognize Aboriginal rights as existing in law (Asch 1982: 65).

It did not take long for the term self-government to be adopted within legal and political lexicon as Native leaders formally initiated the quest for the meaning of self-government following the Calder decision. Although it was released less than one month prior to the Calder decision being announced, the Council of Yukon Indians (CYI) presented a plan for regaining control over lands and resources that included a comprehensive approach to development in its land claims statement to Prime Minister Trudeau in Together Today For Our Children Tomorrow in 1973. This represents a significant shift in how self-determination and self-government was now being understood by Native leaders.

Where previous reports tended to establish the philosophical foun-
dations of self-government and acted as introductory guides outlining why Native people believed that directing their own services would be beneficial, the CYI took it to a new level in their claims to territory under Canadian sovereignty. Trudeau described the recommendations of *Together Today* as positive and constructive and very welcome to the government. For example, rather than trying to convince the government of service delivery at the reserve level, the CYI were clearly seeking to “obtain a settlement in place of a treaty that will help us and our children learn to live in a changing world. We want to take part in the development of the Yukon and Canada, not stop it. But we can only participate as Indians. We will not sell our heritage for a quick buck or a temporary job” (CYI 1973: 18).

The CYI also promoted the importance of retaining a land base prior to the establishment of self-government. Arguing that the Indian people must own the land, and that land is required to be self-governing, for the first time we see the importance of land elucidated in the context of self-government. And, more importantly, we are also presented with foundational philosophy of how Native people in general view the land, not as a repository of resources awaiting exploitation, but rather significant component of who the people in fact were, for “Without land Indian people have no soul – no life – no identity – no purpose. Control of our own land is necessary for our cultural and economic survival. For Yukon Indian People to join in the social and economic life of Yukon, we must have specific rights to lands and natural resources that will be enough for both our present and future needs” (CYI 1973: 31).

Another important theme beginning to emerge at this point is the notion that self-government can be achieved within Canada’s confines, and that separation was not part of and never was the Native agenda when it came to promoting self-government. In many respects, Aboriginal self-government has never aspired to separatist propensities, rather it has always been about remaining in Canada, or developing a formal relationship with Canada and generating forms of government that are both accountable and Indigenous to the land-base Canada continues to assert sovereignty over. The CYI argued that to achieve its objective of obtaining “a settlement in place of a treaty that will help us and our children learn to live in a changing world” and taking “part in the development of the Yukon and Canada” that the Native people of the Yukon must own the land. This would require of Canada compensation for past and future forfeiture of surface and subsurface rights and Native representation on all land and water development agencies.

In 1977, the Federation of Saskatchewan Indians (FSI) became the first Aboriginal organization to formerly articulate what the principles of
Aboriginal self-government were in their position paper entitled *Indian Government*. This paper could be viewed as the principal document to emerge during the 1970s that effectively conveyed what Native leaders believed Aboriginal self-government to represent. In fact, following the claims of the Natives of the Yukon and responding to claims from Natives in B.C. and Quebec, the Canadian government reaffirmed its continuing responsibility as set out in section 91(24) of the B.N.A. Act of 1867 (Dickason 1994: 394).

The FSI document started with a strong assertion:

> No one can change the Indian belief. We are Nations; we have Governments. Within the spirit and meaning of the Treaties, all Indians across Canada have the same fundamental and basic principles upon which to continue to build their Governments ever stronger. (emphasis added)

The ‘fundamental and basic principles’ are:

- that Indian nations historically are self-governing
- that sections 91(24) gives the federal government the authority to regulate relations with Indian nations but not regulate their internal affairs
- that Indian government powers have been suppressed and eroded by legislative and administrative actions of Canada
- that Indian government is greater than what is recognized or now exercised and cannot be delegated
- that treaties reserve a complete set of rights, including the right to be self-governing and to control Indian lands and resources without federal interference
- that treaties take precedence over provincial and federal laws
- that the trust relationship imposes fiduciary obligations on the trustee, but the federal government has mismanaged this relationship
- that Indians have inalienable rights, including the “inherent sovereignty of Indian Nations, the right to self-government, jurisdiction over their lands and citizens and the power to enforce the terms of the Treaties.”

The document defines sovereignty as “the right to self-government. It is inherited and it comes from the people. We have never surrendered this right and we were never defeated militarily.” Sovereignty, according to the FSI, is both “inherent and absolute” for Indian governments traditionally exercised the powers of sovereign nations and the most fundamental right of a sovereign nation is the right to govern its people and territory under its own laws and customs. “Inherent” suggested that the
right of self-government was not granted by Parliament or any other branch of any foreign government and that Indians always had that right, a position they viewed further entrenched vis-à-vis the treaties.

Entitled, appropriately enough, 'Indian Government', this document explicated the Indian position, one that has become familiar to public policy makers in Canada. To this point, discussion regarding what self-government represented was beginning in earnest due to the fact that no effective definition of self-government existed. The FSI contributed greatly to this discussion by outlining a number of questions that would need to be addressed prior to a definition materializing. These included how Native governments would exercise their powers, the extent of Native sovereignty within the Canadian federation, what exactly were the fundamental features of Native government; how was the existing relationship between Native people and the government going to be redefined and what effect could this have upon negotiations.

The FSI set out the major areas that would require joint discussion among Canada's Native groups prior to the restoration-establishment of Indian government becoming a reality. Ever aware that the federal government would play an important role, contingencies were built into the FSI structure to accommodate future developments in Indian policy as handed down by Ottawa. It was clear to the FSI that prior to any significant negotiations taking place Native groups and their leaders would need to fully develop the foundational principles from which Aboriginal self-government could evolve.

Adding to this discussion, the FSI released Indian Treaty Rights: The Spirit and Intent of Treaty in 1979. The authors asserted that between 1817 and 1929, over 20 major international treaties were signed between the Crown and the Indian and Dene Nations. The primary objective of this report was to expand upon what treaty rights were while also providing a contemporary interpretation of what these rights meant. In return for these treaty rights, the Nations agreed to cede certain lands for use and settlement. The FSI claimed that during treaty negotiations, Native leaders were guaranteed all powers of Indian Nationhood, Indian jurisdiction, the right to be born and live Indian, and socio-economic rights.

We also see in this document for the first time how Native leaders believed the right to Aboriginal self-government to be bound by International law resulting from the treaty relationship with the Crown, a position to which many writers remain attracted to (e.g. Barsh & Henderson 1982; RCAP 1996, Ladner 2000). Some writers are critical of sources that simply point to international and domestic law as support for the recognition of self-government due to the fact that the desires of the
parties involved must be considered and acted upon in tandem for effective self-government to emerge (Macklem 1997).

In sum, by the end of the 1970s, we have myriad reports laying the foundation for the inherent right to self-government, which would come to dominate self-government discussions in the late 1980s and throughout the 1990s.

Government Appropriation of an Ideal

The early 1980s was for Aboriginal people in Canada a tumultuous time. Faced with the prospect of Constitutional exclusion, many Aboriginal leaders who were responsible for the groundbreaking work done on self-government during the 1970s were now forced to the periphery of political involvement as government officials seized upon the opportunity to begin defining self-government. The 1980s in many ways is the period when the federal government began unilaterally charting a course that entailed bestowing full decision making authority pertaining to self-government with Ottawa, a situation that persists into the new millennium. There is a certain irony that during this period, academics were for the first time becoming seriously interested in the exigencies of self-government, unwittingly distancing the community-based organizations from the debate. Notwithstanding this turn of events, there were serious attempts made by Aboriginal academics and writers to continue the battle begun a decade earlier and have self-government defined as an inherent right. This resulted in many of these writers for the first time clearly equating self-government with self-determination and Native independence within the confines of Canada. This section will analyse the themes of the work produced by Aboriginal and non-Aboriginal academics pertaining to self-government during the 1980s.

In 1980, Prime Minister Trudeau announced his intention to patriate Canada's Constitution from Britain. However, the memory of Native resistance to the White Paper policy led to a willingness on the part of federal officials to negotiate and formulate more equitable policy documents with Native leaders. The National Indian Brotherhood (NIB) had also as recently as 1978 demanded the inclusion of Aboriginal and treaty rights in the constitution and to be consulted in the process of constitutional reforms (Sanders 1984: 304-6). Accordingly, the Canadian government initiated The Parliamentary Task force on Indian Self-Government (Penner Report) in 1982; the inclusion of sections 25, 35, and 37 amendments to the Constitution Act of 1982 and 1983; the First Ministers Conferences on Aboriginal matters between 1983-87 viewed as a way to "partially reverse hundreds of years of oppressive government policies and neglect, and to improve their intolerable socio-economic

From the beginning it was clear that Canada's first ministers would be reluctant to constitutionally entrench the right to self-government for it represented a departure from the legal and political history of how Aboriginal people had been traditionally viewed within the confines of Canada (Long, Little Bear & Boldt 1982: 192-94). Preceding the announcement to patriate, the Union of British Columbia Indian Chiefs (1980) prepared a report outlining their unease with this decision. Concerned that the federal government was strategically positioning itself to better transfer control for "Indians and lands reserved for Indians" to the provinces, Indian Nations: Self-Determination or Termination stated that the Constitution's patriation would provide the government the leverage required to finalize this transfer.

The UBCIC called for immediate action to prevent the termination of British trusteeship over Canada's Native populations in an attempt to prevent the political and cultural absorption of Native Nations into the Canadian mosaic. The Chiefs stated the belief that assimilation was the driving force behind the announcement to patriate and that international law, not Canadian domestic law, was the source of Britain and Canada's responsibilities toward Indians. As a result, consultation with the Indians was required prior to patriation occurring. In all, the Chiefs were concerned that patriation would entrench poverty and possibly inhibit the opportunity for economic and political growth despite government claims to the contrary.

As stated previously, for close to a decade, Aboriginal groups had through a succession of individual reports been developing the common doctrines that would coalesce into what we today understand self-government to be. One may conclude that much of this had to do with Prime Minister Pierre Trudeau's pronouncement that "we are not here to consider whether there should be institutions of self-government, but how these institutions should be brought into being...[and] how they fit into the interlocking system of jurisdictions by which Canada is governed" (quoted in Dickason 1994: 408). Whether or not Trudeau's words were prophetic, by 1980 Dene leaders were utilizing the Dene Declaration created five years previous to argue that they were never conquered in addition to the fact that they never signed a treaty forcing their recognition of Canada as sovereign. The result was that the Dene still held title to their territory (Miller 1997: 259-260):

We the Dene of the N.W.T. insist upon the right to be
What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene Nation. (Gibbins & Ponting 1980)

Despite this outright assertion of sovereignty, Canada chose to ignore the Dene claims. In 1980, Canada also chose to ignore the Micmac Association of Newfoundland's Live Our Own Way in Our Own Land report, which was designed to demonstrate Micmac and European land use occupancy in Newfoundland. The conclusions derived from this report stood in stark contrast to Ottawa's claims concerning local occupancy. The Micmac Association, for instance, sought to dispel the myth that the Micmac allied with the French, who in turn paid them to eradicate the Beothuk. The crux of the report was to demonstrate that European occupation was not requisite for Micmac survival, and that at least seven centuries prior to first contact the Micmac flourished economically, socially and politically within the region.

Premier Peckford eventually dismissed the Micmac claim in 1982. At the same time, Canada rendered its decision on the basis of the Jones Report, which expressed concern regarding the validity of oral tradition in determining land use and occupancy. Consequently, the Newfoundland government chose to ignore all oral history accounts, even those collected between 1839-1922, accounts that provided the foundation of the Micmac report. Jones was also a critical turning point for Native leaders due in part to its contention that history utilized for the purposes of land claims can only be provided by period historians, anthropologists, and archaeologists, the skills of which could be the only source utilized to prove proper land tenure and genuine land occupation.

In 1982, the Dene Nation and Métis Association of the Northwest Territories released Public Government for the People of the North. Expanding on self-government's foundational tenets, the Dene argued that self-government must reflect both Dene style and form of political organization. This is significant for not only was the theory of self-government evolving, in this instance a self-government model presented. The model presented was designed to work within the Canadian political system and in no way made mention of the Dene distancing them from Canada. If anything, the Dene viewed this as a significant contribution to Canadian culture.

Echoing the Dene Declaration of 1975 in wording and philosophy, Public Government for the People of the North stated that as the original inhabitants to the region the proposed political system would reflect Dene values. Inherent to this system would be Ottawa's formal political
and legal recognition of Aboriginal rights in addition to lands being designated for exclusive use by the Dene for their pursuit of a traditional lifestyle. This model was viewed as a way to alleviate Dene dependency upon Canada, which was defined in this report as social problems, lack of control over natural resources, the rapidly rising costs of living, and the dominance of the federal government when it came to decision making for the Dene.

Despite this flurry of activity in the early 1980s, there are few other reports released by First Nations discussing issues specifically relating to self-government. Political forces at work such as the constitutionally mandated First Minister's Conferences to further develop self-government sidetracked Native leaders from the grassroots work they had been doing prior to 1984. As well, social problems at the community level, which required resolution further tapping resources previously utilized in the self-government discourse, also impact on the ability of Native leaders to fully engage in the emerging self-government debate.

As a result, from 1985-89, only one major report concerning self-government was released by an Aboriginal political organization. It is significant to note that the first academic works dealing specifically with self-government were released during this period, beginning with *Pathways to Self-Determination* (Little Bear, Boldt & Long 1984) and *Governments in Conflict?* (Long & Boldt 1988). A variety of papers by Native writers and scholars probed the intricacies of self-government while laying the foundation for what the contributors saw as philosophical incongruities between how the federal government approached the issues related to Aboriginal self-government and how First Nations approached the subject.

Aboriginal contributors to these two texts re-evaluate many of the same concepts of self-government that had been developing at the grassroots level for the past decade. This however should come as no surprise considering that many of the text’s contributors were in fact grassroots politicians and leaders who during the 1970s were influential in carving out the original concept of Aboriginals self-government. The articles are geared more toward providing readers with a comprehensive understanding of what self-government was from a community perspective and why many First Nations chose to pursue self-government in the manner they did.

Prior to any significant debates taking place pertaining to self-government the editors of *Pathways to Self-Determination* argued that it was necessary to first present the philosophical foundations of Indian governance before attempting an umbrella definition that would no doubt come to affect all Native peoples in Canada. Oren Lyons, an Iroquoian
leader (1984) stated early on that decisions that impact Native people are being made by governments in Western societies that have “as their point of reference the life-span of man or, worse still, the term of office of the decision-makers. The result is some very short-sighted policies” (7). Marie Marule, an Aboriginal academic (1984) concurred and afforded a glimpse into more traditional approaches to governing oneself all the while maintaining that newer models of self-government must be rooted in the philosophies that drove governments of old (c.f. Alfred 1999, 1995; Boldt 1993, Ladner 2000). It is important that when a government develops laws to rule the people that they are developed in accordance with natural law, which in this case is based on living in accordance with what your surroundings offer (Lyons 1984: 12).

The major theme emerging from these writings sees communities not as bands on reserves but rather as nations located within traditional territories, echoing the Dene Declaration. According to then-president of the National Indian Brotherhood, Del Riley (1984), “We are nations within Canada, and we have not given up our sovereignty. We have shared with Canada and have given all we can give. In order to meet our objectives, Canadians must now share with us” (163). Mohawk Chief Tom Porter (1984) declared “We are talking about the nationhood that God gave us, nothing else, because we are the Indigenous natural people. We in the East, the Iroquois, are having nothing to do with Canada's Constitution or the American Constitution, because the Creator gave us our own Constitution over one thousand years ago” (21).

The question of nationhood evoked debates as to the nature of sovereignty. The authors in this case were critical of the lack of recognition of sovereignty by the Canadian state. Ryser (1984) was critical of the proclaimed superiority of the nation-state and how this was utilized to justify the dislocation and dispossession of Native peoples from their territories, something he suggested Native leaders must reject in favour of more egalitarian structures that promote a spirit of inclusiveness. Sovereignty was viewed as something that cannot be given or taken away, more akin to being inherent. According to Kickingbird (1984), who provided an overview of the U.S. situation for comparative purposes, whether the U.S. government chooses to recognize sovereignty, Indian tribes have it according to the Creator. This is the power we hear so much of when Native leaders speak of self-government and the power to do so is provided by the Creator.

There is present in these articles a definite optimism that is tempered in later works by Native writers. For instance, then-president of the Federation of Saskatchewan Indians (FSI) Sol Sanderson (1984) describes how the FSI established the organizational structure to exercise
its jurisdictional authority in Saskatchewan. At the same time, they worked to strengthen internal authority of bands by reasserting traditional institutions such as chieftainship. And Kahnawake Chief Andrew Delisle (1984) took it a step further by outlining how his people, the Mohawks, had taken steps toward acquiring control over health care, policing and other services on the reserve. He argued that Indians needed to be innovative and assertive in their interpretation of the Indian Act if they wanted to progress toward self-government.

Questions were posed for the first time in regards to self-government. Recognizing the trust relationship Native leaders were fighting to maintain is often the primary source of funding utilized to pursue self-government, Powderface (1984) questioned whether accountability to the Department of Indian Affairs and Northern Development was more important than being accountable to the needs of the people at the community level. And, was it possible to go it alone? In all, Chief Earl Old Person concluded by stating that he viewed the contemporary period as a time of hope in that for the first time these existed forums to discuss and decide peacefully what self-government was (1984).

Boldt and Long, in association with Leroy Little Bear, followed with a second collection, *Governments in Conflict?* in 1988. Whereas the first collection had a greater cross-section of Native to non-Native voices, this collection had three writers of Native ancestry contribute. Little Bear provides the most detailed essay in his examination of section 88 of the Indian Act, which stated that laws of general application would be applicable to all Indians living within the province of Alberta. This in reality gives the provincial government the power to apply provincial laws on reserve, even though the division of powers ascribed in section 91 and section 92 should prevent this from occurring. *Dick v. the Queen* was then analysed, with Little Bear concluding that all provincial laws that do not touch upon Indianness apply of their own force on or off reserve (1988). This continues to have serious implications upon self-government negotiations for even if provincial laws apply on reserve, there is little jurisdictional scope provided for from a self-governing perspective.

Chief Roy Fox of the Blood reserve then provided an example of this jurisdictional haggling in his brief paper examining how his band took over policing, but how he also witnessed jurisdictional wrangling that transcended the constitutional division of powers. Fox further claimed as an inherent right the right to water flowing through the Blood reserve that was during this period under negotiation and how he viewed this jurisdictional conflict being resolved (1988).

Finally, Harold Cardinal provided a brief piece touching on a variety
of issues. First and foremost, Cardinal claims that the recent use of the word Aboriginal is a misnomer which suggests homogeneity of culture resulting in only one general perspective regarding self-government among Native leaders and their constituents. Arguing that multiple views will symbolize future self-government negotiations, Cardinal was concerned with what he saw as the federal government trying to confuse Native people to affect the self-government process. Echoing previous writers and Native politicians, Cardinal claimed that sovereignty could not be viewed as delegated, rather it should have be recognized as an inherent right, further suggesting that the differences between Native self-government and federal and provincial models are more alike that different.

The Penner Report on Indian Self Government

With these first academic works being produced on self-government, combined with the fact that the First Minister's conferences had by this time been initiated, the push for self-government in Canada was becoming viewed as a more legitimate pursuit. Also providing a sense of legitimacy was the Report of the Special Committee on Indian Self-Government, also known as the Penner Report. Struck in December 1982 by the Parliament of Canada, the special committee was “mandated to review all legal and related institutional factors affecting status, development, and responsibilities of band councils on Indian reserves, and to make recommendations in respect to establishing, empowering and funding Indian self-government” (Boldt 1993: 88). The committee then travelled throughout Canada to obtain information first-hand from Native people and presented its report in October 1983.

The committee's 1983 report, now named after the committee chair, Keith Penner, represents a fundamental turning point in the debate about Aboriginal self-government in Canada. The committee advanced a view of Aboriginal government that was keeping with its intellectual precursors: an enhanced municipal-style government within a federal legislative framework but there were three important differences that made it significant:

1. The report envisaged Indian government as a 'distinct order' of government within Canada with a set of negotiated jurisdictions and fiscal arrangements.
2. The report recommended the right of Indian self-government should be constitutionally entrenched with enabling legislation to recognize Indian governments;
3. The report defined areas of authority for Indian governments as education, child welfare, health care, membership, social and cultural
development, land and resource use, revenue-raising, economic and commercial development, justice and law enforcement and inter-government relations.

The committee’s report reads:

"For thousands of years prior to European immigration, North America was inhabited by many different self-governing Aboriginal peoples, speaking many languages and having widely differing cultures and economies. The Royal Proclamation of 1763, which formalized British colonial policy for North America, recognized this situation....

Under the Indian Act, traditional Indian governments were replaced by band councils that functioned as agendas of the federal government, exercising a limited range of delegated powers under federal supervision. The Indian Act also failed to take into account the great diversity of Indian peoples and cultures and treated all Indians in Canada as a homogeneous group. These two features of the Indian Act prevail today." (Ottawa 1983, 39-40)

The Penner Report argued for a new relationship with Aboriginal peoples based upon Prime Minister Trudeau’s comments at the First Ministers’ Conference on Aboriginal Constitutional Matters: “Clearly, our Aboriginal peoples each occupied a special place in history. To my way of thinking, this entitles them to special recognition in the Constitution and to their own place in Canadian society, distinct from each other and distinct from other groups who, together with them comprise the Canadian citizenry” (Ibid., 39).

The report recommended that ‘the federal government establish a new relationship with Indian First Nations and that an essential element of this relationship be recognition of Indian self-government’ (141). And ‘that the right of Indian peoples to self-government be explicitly stated and entrenched in the Constitution of Canada. The surest way to achieve permanent and fundamental change in the relationship between Indian peoples and the federal government is by means of a constitutional amendment. Indian First Nations would form a distinct order of government in Canada, with their jurisdiction defined.’ The report indicates that ‘virtually the entire range of law-making, policy, program delivery, law enforcement and adjudication powers would be available to an Indian First Nation government within its territory’ (Canada 1983, 39-40; see also Penner 1988).

The Government of Canada responded to the Penner Report in March 1984. This response accepted the report: “The Committee’s recommen-
dations have a special importance because they were unanimously supported by Committee members of all Parties. It agreed with the need to establish a new relationship with Indian peoples: The effect...is to call for the Government and Indian First Nations to enter into a new relationship.... Many of the details of the restructured relationship will have to be worked out after careful consideration and full consultation with Indian people.

Importantly, the response also read:

"The Government agrees with the argument put forth by the Committee that Indian communities were historically self-governing and that the gradual erosion of self-government over time has resulted in a situation which benefits neither Indian people nor Canadians in general." (Response of the Government, 1984)

The government did not accept the idea of constitutional entrenchment but a decade later it would read the constitution in such a way as to include the right to self-government within it.

What makes the Penner report important in the history of the development of Aboriginal government is that it accepts and reinforces the FSIN argument that Indian Nations have always been self-governing and presented historical evidence for it. The acceptance of the report in the House of Commons and the detailing of a plan for recognition of Indian self-government in our view represents the end of a phase in the debate about Aboriginal self-government. The first phase of the debate focused on the question: do Aboriginal peoples have the right to govern themselves? In 1984, the federal government responded: Yes but within the Canadian federation—details to follow over the next several lifetimes.

According to one writer, "Since the early 1970s, realities expressed by Indian peoples have been considered in the formulation of Indian policy, at least at a philosophical level. The Penner Report reflected these realities to the exclusion of the more traditional Euro-Canadian views, and recommended a paradigm shift to Indian self-government." The Government Response rejected many of the Penner Report's recommendations, although the idea of Indian self-government, "as a component in the existing paradigm, was accepted" (Mawhiney 1994: 125-126).

Despite this optimistic pronouncement, the implementation problems, which followed from the recommendations, were not addressed (Peters 1986: 23). And, most importantly, for the first time not only were Native leaders embracing the concept of a right to self-government but so was the Canadian government. The result of the Penner report's recommendations had they been implemented "would be that Indian people would determine their own form of government, establish criteria for the
self-identification of membership in Indian communities, and exercise jurisdiction in such fields as resources, social services, taxation, and education" (Hawkes 1985, 10).

Following on the heels of the Penner Report, the Cree-Naskapi Act was passed in 1984 and arose out of the first modern land claims agreements and treaties, The James Bay and Northern Quebec Agreement of 1975 and the North-eastern Quebec Agreement of 1978. Described as the first Aboriginal self-government model in Canada, Quebec needed a significant land base to be able to continue on with its James Bay Hydroelectric Development Project, and these agreements resulted in the Cree and Naskapi ceding vast tracts of territory followed by the voluntary extinguishing of Aboriginal title. In return for these concessions, the Cree and Naskapi were to be recognized as having differing title and interests in addition to descending degrees of access to and control over resources and varied powers of self-government (Goikas 1996). These powers include, but are not limited to, the administration of band affairs and internal management, public order, taxation for local purposes, and local services, including fire protection (Isaac 1999: 507).

The major weakness of the Cree-Naskapi Act, according to Isaac (1999; 1991a), is “that it does not confer legislative authority on the Cree and Naskapi bands; however, they possess local government-type powers that are inextricable tied to a constitutionally protected treaty” (507). There are further concerns such as the fact that the Cree and Naskapi do not have the power to create their own constitution and the Minister of Indian Affairs possesses the power to disallow or create by-laws relating to local taxation, hunting and trapping, elections, special band meetings, land registry system, long-term borrowing, band expropriation, and fines and penalties for breaking band by-laws (Isaac 1999: 507). In addition, the Cree-Naskapi do not retain title to their traditional lands.

After all is said and done, the Cree and Naskapi are subservient to the federal Parliament and to the Quebec National Assembly, although in Chisasibi Band v. Barbara Chewanish, Ouellet J. stated, “As long as it remains within the powers conferred, the Band Council represents a level of government independent from the Canadian Parliament and the Quebec legislature” (quoted in Isaac 1999: 508). As a result of this decision, the Cree or Naskapi may choose to challenge Canadian authority and further strengthen local sovereignty through the courts.

Following this official recognition of the validity of self-government, many First Nations and Aboriginal groups entered into the political arena to exercise their right to govern themselves. Many of these same groups chose to ally themselves with nations in close proximity to alleviate the costs of government negotiations. The Dene again took the lead, going
so far as to view the Inuvialuit and some Inuit as part of an extended Denedeh. In 1985, *Denedeh Public Government* was released, and concentrated on developing a form of government that would protect and respect all people and their respective cultures under its jurisdiction according to a system of ‘consociation.’ This meant that a system of democracy based on majority rule would be ensured and that the rights of minority cultural communities would be protected. The common theme of the report, which built upon past Dene reports and, in general, most reports produced by Aboriginal groups about self-government during the previous decade, was the notion that a Dene government could exist within the sovereign state of Canada.

What is unique about this report is that it not only outlines what is required for self-government to become a reality, the authors' provide solutions to their many concerns. Residency requirements were spelled out that prohibited residents voting or running for office prior to becoming a citizen, a constitutional amending formula which would require agreement of the founding partners of their cultural communities, and a royalty and/or resource revenue sharing formula for Aboriginal peoples whose lands form part of the new province was included. There is clearly an approach to entrenching rights of community members into a local constitution or charter that would permit co-existence within the Canadian state.

The final report to emerge during the 1980s was the Union of British Columbia Indian Chiefs *Aboriginal Title and Rights Position Paper*. Focussing on the common theme of co-existence that had during the 1980s become so integral to the self-government debate from a Native outlook, the UBCIC presented a model for self-government that was designed to aid in the resolution of political, social, legal and economic conflicts facing Native peoples in B.C. In this instance, the Chiefs argued in favour of their inherent right to self-government based on Aboriginal title, international human rights and the provisions of the Canadian constitution. Aboriginal title flowed naturally from occupancy of the land, which included the right to choose and determine the authority to exercise through Indian governments, the right to exercise jurisdiction to maintain their connection to Mother Earth, and the right to share the governing powers over their land.

The UBCIC further took the time to evaluate the Native/European relationship, a bond that was originally predicated on the basis of mutual cooperation that in turn recognize the validity and need for maintaining cultural institutions for the continued survival and success of all people in Canada (Miller 1997). Self-government through the recognition of Aboriginal title has also been recognized as grounded in inter-
societal norms that enabled this co-existence (Macklem 1997). This was followed by a call for complete decolonization within Canada, again echoing the Dene Declaration. By the end of the 1980s, it was clear that the push was on to have self-government recognized as a “right of Aboriginal peoples which should be specifically articulated in the Constitution of Canada” (Dunn 1987: 57).

By the late ‘80s, Aboriginal people had progressed to the point of firmly declaring their status as a third founding people of Canada and were increasingly demanding “to be included in the confederation bargain as an equal member” (Brock 1991: 276; also Brock 1996). Unfortunately Aboriginal organizations lacked the legitimacy required to press constitutional issues or affect positive change. Yet despite the perceived failure of the First Ministers’ conferences, the push by academics to clarify the concept of self-government marched on. In 1989, David Hawkes released *Aboriginal Peoples and Government Responsibility: Exploring Federal and Provincial Roles*. Concerned that Aboriginal interests were being ignored, the contributors explore a variety of issues in order to provide a “conceptual or analytic framework concerning Aboriginal peoples and federal/provincial responsibility” and “to explore what responsibilities federal and provincial government are actually accepting in this area” (Hawkes 1989a: 10).

A number of important conclusions were presented that expanded the foundation of what Aboriginal self-government was. Most significantly, the collection of articles had the effect of indicting not only the federal government but also the provincial governments as major players in the unfolding self-government movement. Federal and provincial officials attempted to ignore this position. This brought back to the discussion the importance of historical relationships that extended beyond legal definitions, but instead focused on the need to engage one another beyond the scope of formal negotiations. The concept of government responsibility posed a definitional dilemma for it is more difficult to define than jurisdiction (Morse 1989). In terms of provincial responsibilities, section 91 and 92 jurisdictional overlap means that the provinces are important players in the lives of Aboriginal people, and there is a need to reconcile this pattern of involvement before executing Aboriginal self-government (Abele & Graham 1989; Peters 1989).

Pratt then revisited the concept of federal and provincial responsibilities, arguing that the federal government is the primary guardian of the collective rights of Aboriginal peoples, whereas the provinces are the guardians of their individual rights (1989). This leads to an obvious tension, for according to Scott (1989) the provinces are responsible to treat Aboriginal people as full citizens while the federal government
maintains a guardian-ward relationship while also retaining responsibility for the special Aboriginal nature. This indicates that there is a provincial role in the area of programs, and that provincial involvement in negotiations vis-à-vis a tripartite model is requisite in any self-government negotiations.

A general but important theme to emerge from this volume suggested that the "drive for constitutionally-based Aboriginal self-government at the national level, and the provision of meaningful programs and services to Aboriginal peoples at the community level, ought to be viewed as complementary rather than contending objectives" (Hawkes 1989b: 363). That academics were now finally investigating how the 'nuts and bolts' of government should be assembled for Aboriginal self-government to become fully operational was moving, for even though Native leaders the previous decade had begun to develop this line of thought, the federal government increasingly ignored their statements. Now that there was academic recognition of the same issues, the likelihood of federal officials paying attention and guiding the self-government process toward more pragmatic concerns appeared rational.

Finally, a secure fiscal base was deemed necessary if Aboriginal self-government was to succeed (Hawkes & Maslove 1989), but two important questions which continue to underlie the Aboriginal self-government debate were broached: 1) should Aboriginal self-government be considered a third level of government; and, 2) what is the source of power for Aboriginal governments, and is this more of a barrier to agreement than the range of such powers (Hawkes 1989b: 365). In relation to these two concerns, the jury as it were is still out. In fact, the latter issue is still a major stumbling block for despite government policy recognizing the inherent right to Aboriginal self-government, it is considered a delegated right according to the same policy; as such, this position strikes at the heart of the concept of inherent, which would suggest a greater scope of power pertaining to self-governance.

As the 1980s came to an end, the question of what Aboriginal self-government represented became increasingly muddied. As one issue was dealt with, additional questions would arise making ease of definition impossible. As the 1990s dawned, the importance Aboriginal people placed upon their ability to self-govern would become pronounced and would lead to some significant shifts in Canadian and First Nations notions pertaining to Aboriginal self-government.

The 1990s: Working Toward a Common Goal

By the end of the 1980s, despite mounting pressure by Aboriginal leaders to have self-government recognized as an inherent right, the
The Pursuit of Aboriginal Self-Government

push for Aboriginal self-government appeared stalled. According to David Hawkes, “With the expiry of the section 37 process, Aboriginal self-government in a sense ‘fell off’ the national constitutional agenda” (1989a: 64). Despite this fact, or in light of it, a number of incidents raised the public’s consciousness to the continuing poverty and marginalized position of Aboriginal people in Canada. These incidents set into motion events that still play a central and defining role in self-government negotiations and the evolving Native/government relationship. The first was the 79-day standoff at Oka, in 1989 (York & Pindera 1991). The second, which was a direct result of the Oka stand-off, was the 1991 announcement that Canada would establish a Royal Commission on Aboriginal Peoples (RCAP). The Commission was to investigate the evolution of the relationship among Aboriginal peoples and the Canadian government and propose recommendations to alleviate social problems at the reserve and community level and political difficulties at the provincial and federal level.

The Courts and the Aboriginal Elite Comment

In between these two events, the Supreme Court of Canada also handed down the influential Sparrow decision. Stating that section 35(1) of the Constitution Act of 1982 provides protection for Aboriginal rights that had not been extinguished prior to 1982, the court decided that in order to prove this Aboriginal right to partake in an activity, an Aboriginal group must show that it still engages, as a community, in that activity and that the activity has been a traditional part of the community for a significant period of time. Once proved, these rights are protected by section 35(1) unless the government can demonstrate that these rights had been properly extinguished. In short, with Sparrow, the court adopted the language of Professor Slattery in its recognition that Aboriginal rights “are recognized and affirmed” despite determining also that Parliament could still infringe upon Aboriginal rights if the infringement could be justified with a strict test (McNeil 1993). During this period the Canadian government also decided to move away from the contingent-right approach, suggesting rather that a general right to self-government be entrenched in the Constitution that would have recognized Aboriginal people as possessing autonomy over their own affairs within the Canadian federation (Morse 1999: 22).

The Assembly of First Nations was quick to comment, stating “Our Creator, Mother Earth, put First Nations on this land to care for and live in harmony with all her creation. We cared for our earth, our brothers and sisters in the animal world, and each other. These responsibilities give us our inherent, continuing right to self-government. This right flows
from our original occupation of this land from time immemorial" (1991: 8). The Native Council of Canada followed by claiming that “Part of the problem is the failure to see that Aboriginal rights do not come from European documents or agreements or pieces of paper, although they may be acknowledged or recognized or defined on paper. Aboriginal rights are “inherent” in Aboriginal peoples. They are inherited from our ancestors” (1992: 3).

Finally, there was the rejection of the Charlottetown Accord by the Canadian public in the 1992 referendum. The Charlottetown Accord was during this period the most recent attempt by Canada and the provinces to address changes to Confederation. It was an attempt to appease Quebec’s need for recognition of distinct status as it did to establishing a third order of Aboriginal government. What was groundbreaking, in addition to the federal and provincial governments agreeing with each other in regards to Aboriginal affairs, was that the accord proposed amending the Constitution to recognize the inherent right of Aboriginal self-government. In addition to recognizing and legitimizing Aboriginal concerns and claims this was a clear attempt on the government’s part to clarify an Aboriginal government’s jurisdiction. Item 41 stated that:

...the exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:

a) to safeguard and develop their languages, cultures, economies, identities, institutions, and traditions; and

b) to develop, maintain and strengthen their relationship with their lands, waters, and environment so as to determine and control their development as people according to their own values and priorities and ensure the integrity of their societies.

The Accord was defeated in referendum as both Aboriginal and non-Aboriginal people expressed concern over many of the Accord’s proposals, as was the possibility of entrenching the inherent right of self-government. Adams stated that Aboriginal organizations were exposed during the referendum process as being irrelevant and meaningless to the Aboriginal population and little more than “puppet and collaborator leaders and organizations” that offer little to the push to secure self-governance (1992: 108; see also Adams 1995).

The Sechelt Indian Government Act was offered as a prime example of how misunderstood the concept of self-government was by all parties involved. Under the conditions set out in the Sechelt agreement, Adams asserted that self-government meant “loss of land claims, and an entrenchment of colonization” (102). “Self-government as a concept
does not serve Aboriginal people.... Self-government for the federal government means full power to administer Aboriginal lands and resources” (102). At the same time, however, a universal right of self-determination “seems inadequate to the task of capturing the full range of historical, political, legal, and moral considerations that arise whenever a national groups asserts the right to secede from an existing state” (Slattery 1994: 733). Rather the right to national self-determination arises only in specific historical circumstances, the precise configuration of which cannot readily be determined in advance” (733).

Isaac (1992), while clear in his favour of the Accord, specifically its recognition of the inherent right of self-government and the provision requiring for treaty rights to be interpreted in a “just, broad and liberal manner,” stated that “the municipal form of self-government advocated for a number of years by Indian Affairs must be rejected” and that future agreements must recognize “the inherent sovereignty (within Canada) of First Nations and must share legislative authority with First nations so that their people can take full control of their lives” (112).

Clearly by the early 1990s, academics and grassroots Aboriginal leaders were rejecting the Canadian government’s understanding of self-government and focussed rather on self-government being recognized as an inherent rather than delegated right. Following both the Meech Lake and Charlottetown Accords, Aboriginal groups persevered in an attempt to further define what self-government was and to impress upon government officials the need to formally recognize this inherent right. Whether or not the First Nations were sceptical of government motivations or just intent on formalizing the concept of self-government for future negotiations, there was no reduction in the amount of work or number of reports being produced.

Promoting the need to recognize the spirit of coexistence within the self-government discussions, the First Peoples Constitutional Review Commission in 1992 released Aboriginal Directions for Coexistence in Canada: Native Council of Canada Constitutional Review Commission Working Paper no. 1. This report reinforced the need to work together for the purposes of establishing a new relationship with neighbouring societies while also offering a variety of suggestions aimed at promoting discussion regarding the renewal of this relationship. Both the Trudeau and Mulroney governments opposed this approach, with both instead favouring a contingent rights approach which required that the content of self-government be defined by agreement among federal and provincial governments prior to there being constitutionally entrenched (Morse 1999: 20). However, “the contingent-right approach was completely unacceptable to Aboriginal peoples because it presupposed that their right
of governance had somehow been abolished over the years and was not to be created by the Constitution" (Morse 1999: 20).

The report opens by describing the important role Native people played in Canada's development and how this history is often forgotten or ignored, emphasizing the fact that Native people can coexist within Canada despite the failure of the terms of confederation to recognize this capacity. In addition to a discussion on historical and contemporary issues, the report was designed to promote discussion among Canadians. It recommended that there was a need to ensure equity of access to rights, and mobility of these rights, to recognize that Aboriginal peoples constitute distinct societies with their own languages, cultures and institutions and that they are a fundamental characteristic of Canada, and as such, should be guaranteed Constitutional recognition.

The Review Commission argued that there was the need for clear affirmation of the inherent right to self-government and for secured access for Aboriginal communities to land and resources; for a constitutionally mandated process of dispute resolution which is fair and swift; to adopt a community-based approach in order to find solutions to national issues; to adopt a new treaty process, endorsed by Aboriginal leaders, which features clear dispute resolution mechanisms; to ensure unity among Aboriginal peoples, perhaps by re-creating, with modifications, the Aboriginal Summit, as a means of assisting all Aboriginal peoples in reaching common, unified positions on crucial issues; to embrace the principle of securing Aboriginal consent to fundamental changes in laws, including the constitution and policies affecting them, and to support this principle by establishing community processes for significant discussion and direction to national leadership.

Less than one year following Canada's initiation of RCAP, a National Treaty Conference was held in Edmonton in April 1992 to address the urgent concerns and issues affecting First Nations and their treaties. The final report of the National Treaty Conference, entitled *Indigenous Treaties and Self-Determination: Past-Present-Future*, examined the post-confederation numbered treaties in an effort to determine how they would affect First Nations inherent right to self-determination and government. The goal of the conference was to reach consensus regarding treaty rights that could then be brought into self-government negotiations without diminishing the First Nations bargaining position. It is interesting to note that despite the varied concerns and issues that arose during the conference, there was consensus among the First Nations that there was a need to pursue the implementation of inherent treaty rights as agreed upon by treaty commissioners and the various First Nations groups at the time of signing.
The concept of nation-to-nation negotiations had by now become popular and began playing an integral role at the National Treaty Conference. It was proposed that a stewardship model that recognizes different kinds of land users, where an annual council would meet regularly to discuss issues pertaining to that land base, would promote living better together (Potts 1992). It was agreed, for instance, that First Nations must negotiate with the government of Canada on a nation-to-nation basis and that treaties are sacred agreements that must be protected, upheld and honoured for future generations. It was suggested as well that the bilateral nature of the treaty relationship between the Treaty First Nations and the Crown must be maintained and only those First Nations party to a particular treaty may consent to any action that may affect that treaty.

Interestingly, a consequence of the conference resulted in the First Nations concluding that other Aboriginal groups without treaty rights may not speak on behalf of First Nations. For the first time, not only was the push for self-government being established on the basis that it was an inherent right, treaties were now being promoted as containing provisions that recognize the right to self-government, if not implicitly, then on the justification that Canada negotiated the treaties on a nation-to-nation basis and that First Nations are sovereign nations under their laws.

The First Nations concluded that more research into the issue of treaties and their connection to self-government was needed proceeding on the belief that the nation-to-nation status of the treaties is protected and guaranteed and that the Constitution of Canada respect the sovereign Treaty First Nations. Its recommendations included that the Crown in right of Canada recognize, guarantee, and honour inherent and treaty rights of Treaty First Nations; that the Constitution of Canada recognize and respect all differences between sovereign Treaty First Nations and sovereign First Nations which do not at present have rights under treaty; that a complete review of all non-Indigenous laws and agreements which affect the treaty relationship be undertaken; that a complete review of section 91(24) of the B.N.A. Act, 1867 be initiated to deal specifically with the fiscal relationship between the Crown in right of Canada and the sovereign Treaty First Nations; and that any constitutional amendment only occur with the consent of the sovereign Treaty First Nations.

The Assembly of First Nations (AFN) followed with a release of its own report entitled First Nations Circle on the Constitution: Commissioners’ Report. The purpose of this report was not to present an overly philosophical or legal assessment in regards to self-government, rather
it was to present the concerns of First Nations people with respect to self-government and make available to the public these ideas. In all, 80 meetings were held where the commission heard from elders, youth, women, and off-reserve Native people. The publication of the report was to be used to further educate Canadian people and politicians about what Native people believe self-government to be as well as to show how they would like to see it one day implemented within Canada (two reports follow in 1992 – see references).

The discussions revealed a deep-seated interest on the part of Native people for the formal recognition of self-government. There was also a wealth of information presented by these participants that indicated not only an advanced understanding of the issues, but also an advanced understanding of the internal working of their communities. Issues of high unemployment, poverty, racism, loss of spirituality, pre-existing right to self-government, disdain for the Constitutional process and the Indian Act, as well as the loss of land and failure on the government’s part to live up to its treaty obligations, to name a few, were discussed with candour. Of note, this report provided to date the most comprehensive list of recommendations pertaining to the implementation of Aboriginal self-government. Its recommendations included provisions for dealing expressly with the pace at which the inherent right of self-government would be implemented, how cost-sharing between Canada and Aboriginal governments would be managed, how arrangements would be made to alter the Constitution to recognize an inherent right to Aboriginal self-government, and that past injustices be acknowledged. Provisions would also be included that dealt with intergovernmental relations and elders, women and the youth.

The Royal Commission on Aboriginal Peoples

The next and last major report of the 1990s that dealt significantly with the issue of Aboriginal self-government was that of the Royal Commission on Aboriginal Peoples (RCAP). By all appearances the push for self-government appeared stalled by the late 1980s, a situation which was further exacerbated by the failure of the Meech Lake Accord and the very real threat of violence as demonstrated at Oka in 1989, which in turn propelled the government to become proactive in altering the course of Native/Canadian relations. Interestingly, Native people tended not to view the demise of the Meech Lake Accord as a failure, rather they pointed to the educational value of the exercise and the openness of the process (Hawkes 1989a: 61).

Nevertheless, these assorted events propelled Prime Minister Brian Mulroney to create the Royal Commission on Aboriginal Peoples in 1991.
Costing more than $50 million, the final report of the RCAP is a five-volume report consisting of 3536 pages that deals with a myriad of issues including, but not limited to, Aboriginal justice issues, Aboriginal suicide, and Aboriginal self-government. RCAP commissioner Peter Meekison stated that in total “the Commission met 100 times, had 178 days of hearings, recorded 76,000 pages of transcripts, generated 356 research studies, published four special reports, and two commentaries on self-government” (in Cairns 2000: 116).

Despite an impressive mandate charging the Commission to address issues as diverse as justice, land claims, relocation of the Inuit, and health, to name a few, RCAP was viewed first and foremost as an unparalleled means of renewing Canada’s relationship with Aboriginal peoples, while at the same time “enabling Aboriginal peoples to take their rightful place as partners in Confederation” (Ladner 2000: 81). The Commission’s research focused on demythologising an array of preconceived notions about Aboriginal people for the purposes of building a new relationship which would aid in the development of Aboriginal self-government for the purposes of gaining control of the direction of everyday life.

Published in 1996, the Final Report of the Royal Commission on Aboriginal Peoples argued that the right of Aboriginal peoples to govern themselves is recognized in both international and domestic law. The principles of mutual recognition, mutual respect, sharing and mutual responsibility helped define “a process that can provide the solutions to many of the difficulties afflicting relations among Aboriginal and non-Aboriginal people.... When taken in sequence, the four principles form a complete whole, each playing an equal role in developing a balanced societal relationship. Relations that embody these principles are, in the broadest sense of the word, partnerships” (RCAP, Vol. 1., 1996, 677-678). The Commission envisaged a new Canadian partnership based on mutual recognition, one in which Aboriginal and non-Aboriginal people would “acknowledge and relate to one another as equals, co-existing side by side and governing themselves according to their own laws and institutions” (RCAP Vol. 1., 1996, 678)

A sizeable body of literature was produced about Aboriginal self-government, including 25 case studies. All of the case studies examined a specific nation (see Case Study bibliography). The RCAP final report defined self-government as a right to be vested in ‘people’ and “whatever the more general meaning of that term, we consider that it refers to what we will call Aboriginal nations...[meaning], a sizeable body of Aboriginal people with a shared sense of national identity, that constitutes the predominant population of a certain territory or collection of territories” (RCAP Vol. 2, 1996: 177-178). Despite a promising beginning to a
report which many scholars and politicians saw as presenting as a radical vision of the future, the RCAP delineated self-government as a right dependent upon an Aboriginal peoples’ claim to nationhood, limiting further what peoples were able to claim this right (Ladner 2000: 84). In short, some Aboriginal academics and politicians saw the RCAP vision as a “pooling of existing sovereignties” requiring the formation of these varied groups into a unified entity in order to exercise their right to self-government, an approach that Cardinal was critical of just eight years earlier.

Unlike the grassroots vision of self-government which views each independent nation as capable of negotiating their own self-government provisions with Canada, RCAP suggests that only once Aboriginal ‘nations’ are reconstituted and recognized as nations can they exercise their right to self-government and “sphere of jurisdiction implicit in section 35 of the Constitution Act, 1982” (Ladner 2000: 85). The jurisdiction of Aboriginal nations is divided into two co-dependent parts: 1) core jurisdiction; and 2) periphery. In short, RCAP views the right of self-government as being vested in nations or peoples rather than in the bands defined by the Indian Act of 1876 (Castellano 1999: 98).

Despite the fact that the RCAP was tabled eight years ago, the analysis produced to date concerning its proposals has been sketchy and sparse. The idea that Native people believe the relationship between their leaders and Canada can be mended and that both peoples can exist side by side without affecting the cultural integrity of one another has been written about by a variety of writers intent on analysing RCAP’s recommendations (e.g. Ladner 2000; Cairns 2000; Russell 2000; Ponting 1997; Frideres 1996; Warry 1998). Yet it is telling when one stops to consider that there has been little material produced about the process, the recommendations, or inaction on the part of Canada in its response to RCAP since its release in November 1996.

Ladner (2000) is critical of RCAP’s failure to stay true to its mandate, offering, “RCAP never even comes close to institutionalising the Aboriginal vision of self-government” the commissioners sought to expand upon (101). RCAP’s major shortcoming, according to Ladner, is that it “ignores diversity, suggesting instead that Aboriginal nations can be reconstituted, created and imagined regardless of historical differences and colonial legacies” (101), although it has been argued that size is important for achieving economies of scale required to properly exercise powers of self-government (Wien 1999: 257; Franks 1987). In short, Ladner (2001) views this approach to establishing self-governance as nothing short of negotiated inferiority (241).

McDonnell and Depew concur with Ladner, adding that the national
model as promoted by the RCAP is a dangerously naive strategy (1999: 357). Russell (2000) is equally concerned, although he is more troubled that the RCAP relied too heavily upon the Sparrow decision in formulating its core/periphery self-government model, where the court reasoned that Aboriginal rights are immune from government regulation (R. v. Sparrow 1990, 1110). It has been suggested, “Aboriginal rights are the only fundamental human rights that have yet to be recognized for Aboriginal people” (Barnaby 1992: 44). But, “[s]ince section 35 rights cannot rely upon the section 52 entrenchment function (in the 1982 Constitution Act), simply legislation that affects Aboriginal rights, even to the extent of extinguishing them, may be valid,” meaning that Aboriginal rights, including the right to self-government, “would first have to be negotiated with the relevant federal and provincial governments before it could exercise any jurisdiction in this area” (Russell 2000: 148, 151).

This results in the RCAP’s core/periphery negotiation structure and design. Russell also comments on the use of the word ‘vital’ by the RCAP, a concept that has the power to effectively curtail those bands seeking self-government by forcing them to “review each piece of legislation to determine whether it is vital to the integrity of its community. Although such a task is daunting, there is nothing in the RCAP recommendations that would clearly relieve an Aboriginal government from such an undertaking” (2000: 152).

Cairns (2000) demonstrated less concern than either Ladner or Russell, although he contends that the RCAP’s task of “finding a place for Aboriginal nations in the constitutional order to exercise self-rule” ignored the connectedness of Canada’s political structure (158). The RCAP, according to Cairns, had “little enthusiasm for a direct individual citizen link with federal or provincial authorities” (154), which results from the Commissioner’s focus on “building the concept of nation, the instrument of treaties, and the reinforcement of difference” (157). In the end, the author states that the RCAP “lacks a vision of a common society, of a community of citizenship that reflects part of the identity of each of us, of the divided civic identity of a federal people” (158). It must be noted that Cairns enthusiastically promotes the notion of Native people as ‘citizens plus’ who in addition to possessing normal rights also had rights emanating from treaties and Aboriginal rights.

Other inquires into the RCAP, focussed on different aspects of the report. Frideres (1996), for instance, released an overview of the RCAP’s creation, how the media covered the actions of the commission while providing a content analysis of the 850 submissions made and how self-government was presented in these briefs (247). His analysis concluded that support for self-government was Canada-wide (259). In all, those
who made presentations to the RCAP commissioners considered self-government as “one of the most important issues facing Native communities today” (260). Ponting also provided an overview of the myriad issues RCAP dealt with, concluding his cursory examination by stating that “never before in Canadian history has a Royal Commission recommended so many profound and sweeping changes to the structure and functioning of Canadian society” (1997: 469), although he prefaced his piece by claiming that many of the recommendations provided “will never be implemented” (445). Donahue (1999) strongly advised that the RCAP recommendations be implemented to foster the preservation of the Aboriginal conception of justice as healing, through recognition of self-government, as an integral part of this commitment. Warry (1998) put forth the notion that community healing must be implemented in conjunction with self-government initiatives if not prior to engaging in such processes (see also O’Neil, et al. 1999).

Formal Recognition of the Inherent Right to Self-Government

The move toward the formal recognition of the inherent right of Aboriginal self-government was progressing slowly and cautiously. By the early 1990s, Prime Minister Mulroney’s cabinet ministers were more inclined to negotiate land claims settlements than they were to negotiate self-government or accept the Indian Act Alternatives process. The slowness has been blamed on both the Canadian government and a reluctance expressed by Canadians to embrace the idea: “Aboriginal self-government can happen only if an ideological transformation takes place in Canada. Canadian society and its leadership must be brought to realize that a plurality of autonomous social life forms is not impossible to organize and that it is not necessarily detrimental to Canadian interests” (Hueglin 1996).

In 1995, however, the Inherent Rights Policy (IRP) was announced, fulfilling a Liberal government election promise previously outlined in its Red Book of 1993. The Government of Canada recognized that Aboriginal peoples have an inherent right to self-government as an existing right within section 35 of the Constitution Act, 1982 in matters “internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions and with respect to their special relationship to their land and their resources” (Canada 1995). Both the federal government and First Nations take the position that the inherent right to self-government is an existing Aboriginal right recognized and protected within section 35(1) of the Canadian Constitution. The federal view is that rights must first be conferred upon a band prior to their
being recognized from a legal standpoint. In this case, “The government in council may at any time withdraw from a band a right conferred upon the band” (Bartlett 1986).

Brizinski (1999) argues that Canada’s recognition of the inherent right to self-government is little more than a policy on rights as opposed to a legal definition of those rights which is essentially the negotiating position of Canada. It sets out what Canada is willing to negotiate in a self-government package and that there is no room for sovereignty, indicating that “Aboriginal jurisdiction must be harmonized with existing municipal, provincial, and federal jurisdictions” (279). Monture-Angus con­curs, indicating further that the meaning of self-government “has become attached to the agenda of the federal government to provide municipal-style governments on ‘Indian reserves’” (1999: 30; cf Hall 1986). Then president of the Inuit Tapirisat Rosemarie Kuptana commented to the Special Joint Parliamentary Committee on a Renewed Canada that inherent “does not connote a desire to separate from the Canadian state. Inherent connotes the notion of human right[s] that can be recognized but not granted, rights that may be unlawfully violated but that can never be extinguished” (Special Joint Committee 1992, 37:12).

Some scholars believe that “The implementation of self-government should be a national priority. It should be pursued, both through the constitutional process when it again becomes available, but also within the existing constitutional framework. But it requires an overarching framework for proceeding, as well as a strong commitment from government” (Hylton 1999a: 3). Slattery postulates, “Over the years, the right was whittled away by the provisions of the Indian Act. However, it seems the right of self-government as such was never extinguished.... The important consequence is that, when section 35 of the Constitution Act, 1982 took effect, the right of self-government was still extant and featured among the “existing Aboriginal and treaty rights” recognized in the section” (1992: 279). However, “The right of Aboriginal self-government, exercised by Aboriginal peoples with diverse historical experiences, and acknowledged by the Crown in the Royal Proclamation of 1763 and elsewhere, has never been relinquished” (Morse 1999, 17; cf Clark 1990).

As always, there is a suspicion of government motive in all of this. Some scholars look to the past and wonder if the Canadian government is genuinely trying to move away from the past in its desire for extin­guishment of Aboriginal title. They see the policy as removing the ‘other’ from modern Canadian society, a contemporary policy of assimilation if you will (Slowey 2000). The problem in many cases has to do with what could be defined as “epistemological dependency,” or “a dependency
on the very terms of reference and expression that are required in order to participate in the Euro-Canadian political and social system” (West 1995: 280). This dependency can be broken, but “political self-determination rests on the ability of Native peoples to realize their meaningful participation and control over their economies, their cultures and their administrations, but not necessarily in that order” (281).

As an example, extinguishment of Aboriginal title is a prerequisite for obtaining self-government. Aboriginal rights can be extinguished one of three ways: 1) by surrender; 2) by legislation, and 3) by constitutional amendment, all under the condition that the surrendering of these rights is voluntary and only to the Crown (Hogg 1992: 19-20). Interestingly, there is no particular mechanism or overriding criteria according to which this extinguishment must occur (Joffe & Turpel 1996). However, federal and provincial governments do not have the authority to extinguish Aboriginal rights without the consent of Aboriginal communities themselves (Clark 1990; Ryder 1991). This puts First Nations in a difficult position for to achieve self-government; they must give-up the rights they argue may be inherent in order to gain the one primary right that in turn should protect the rights of the collective.

A number of innovative solutions to claims of overarching Canadian sovereignty were presented in the 1990s further advancing the self-government cause, sovereignty that “rest[s] on unacceptable notions about the inherent superiority of European nations” and, if true, “does violence to fundamental principles of justice and human rights in the modern world, such as the assumed equality of peoples” (Asch & Macklem 1991: 510). For example, treaty federalism has been premised to describe the relationship between Aboriginal peoples and non-Aboriginal people defined in a series of treaties (see Brown and Kary 1994; Bear Robe 1992; Henderson 1994; Siksika First Nation Government Committee 1992; Macklem 1991). In short, “Treaty federalism in the Aboriginal understanding emphasizes mutualist and holistic values, and it operates through a process of co-ordination and compromise on the basis of consensus” (Hueglin 1996).

This has led to the suggestion that within Canada two parallel forms of federation already exist: that established by the British North America Act of 1867 defining the relationship between the central government of Canada and the provinces, and that established through the various treaties entered into by Aboriginal and non-Aboriginal parties since the early 1600s and reaffirmed by section 35(1) of the Constitution Act, 1982, thereby establishing a parallel relationship between the government of Canada and the Aboriginal peoples (Henderson 1994). Similarly, another innovative approach is to utilize the Crown. A Crown in Canada is a
sovereign entity with well-established and recognized rights and privileges. The resulting divisibility of the Crown ensures that each Aboriginal government, however it may be composed, can define its government in a manner unique and individual to the needs of the particular people concerned (Isaac 1994). As “a conduit for responsible and representative government ensuring that those in power have the support of the majority of the representatives of the people” is the “basis that the concept of the Crown must be understood” (Isaac 1994: 223).

The varied components of the Canadian state are thereby permitted to retain a degree of sovereignty within Canada, which also ensures that the central government cannot exercise absolute authority. Of course, this is not to say that there will not be significant changes to the federal and provincial governing structure should self-government become a reality. Despite this reality, little work to date has been produced regarding what these changes encompass and how these proposed modifications could be facilitated. In the case of treaty federalism, for instance, it is vital to synchronize these two types of governing approaches into a practical harmony (Watts 1996). Others posit that there is potential for adaptation in the federal system to meet the requirements of Aboriginal government, “as well as the ways in which Aboriginal political culture and institutions can help to redefine the meaning of Canadian federalism” (Brown & Kary 1996).

The 1990s was a period of intense legal research that was productive and supportive of the notion of self-government as an inherent right. More so, much of the research was conducted from an Aboriginal perspective which some scholars hope will result in a synthesis of legal philosophies drawn from “diverse cultural understandings...[with] the potential to transform traditional legal doctrine” (Borrows 1994a: 6-9). Accordingly, this would mean that the argument of whether to accept wholly western traditions of governance put forth by some less optimistic Native leaders is at this stage misleading due to the interconnected lifestyle that exemplifies life in Canada. “While the exercise of power may have its source in the inherent right to self-government, the exercise of the power transpires in a fashion that is completely new to the people employing it. The exercise is neither adopted nor traditional, but is an amalgamation of the two perspectives” (Borrows 1992: 311; cf Newhouse 2000a, 2000b).

Urban Aboriginal Self-Government

With the influx of First Nations people into urban centres during the past twenty years, there has been some attention paid to establishing urban Aboriginal self-government for these populations, although a re-
Recent review of the literature indicates that "effective [best] practices in municipal-Aboriginal relations reveals little direct discussion of the topic" (Hughes 1997). Peters (1995) is quick to point out that urban Aboriginal issues remained largely ignored from the mid-1980s until the establishment of the RCAP. George (1992) established that even though close to three out of four Aboriginal people in Canada were urban dwellers, most Canadians associated Aboriginal people with reserves, a fact that could hinder self-government negotiations for urban Native peoples. Despite the popular belief that self-government will result in further separation of Native people from the rest of Canada, the crux of urban Native demands rests on the notion that Native people want more input and jurisdiction over aspects of their lives such as services, employment and cultural institutions (Calliou 1998; Peters 1992).

There have been concerns regarding the issue of urban Aboriginal self-governance. It has been suggested that the establishment of self-government could lead to difficulty and uncertainty on reserves, which in turn could result in significant emigration of discontented Aboriginal people to urban centres (Four Directions Consulting Group 1997). Another concern that was expressed recently by many RCAP participants was how they viewed the government's actions in terms of urban Aboriginal self-government as irrelevant, and that it was incumbent upon those urban Aboriginal populations to devise their own responses, plans and decisions (RCAP 1993; Blakeney 1994).

The Report of the Urban Governance Working Group followed this in 1993, which found that the inherent right to self-government did exist and that urban self-governing structures should not simply mirror municipal systems (Graham 1993; cf Hall 1986). The Report went on to recommend that Urban Aboriginal institutions be established; co-management initiatives should be created; and that special initiatives need to be developed (Graham 1993). Yet despite this brief examination, the RCAP virtually ignored the urban self-government issue, a fact that concerned Cairns (2000); the RCAP also emphasizes that there is a need to examine the issue closely in light of the recent baby boom occurring among First Nations people, which will no doubt inflate the urban population numbers.

This is, however, not a new trend and one that was identified in 1994 by Evelyn Peters, who utilized data from the 1991 Aboriginal Peoples Survey to identify the characteristics of Aboriginal peoples in the cities and to compare those characteristics among Aboriginal peoples in different cities to determine the limitations of the available data on Aboriginal peoples and their corresponding demographic bases of governance. She concluded that due to inherent cultural differences and variables
specific to urban settings that are not normally an issue on reserve that there must be a degree of flexibility in any self-government approach (Peters 1995). The Canadian government (2000) concurred with this approach in Gathering Strength, its official response to the RCAP findings and recommendations. It was determined that the approach to urban governance must be multi-dimensional due to the many communities and leaders that will become involved.

The complexity of urban self-government will undoubtedly affect any proposed governance designs, although it has been demonstrated that urban Aboriginal service organizations can have a political and service provider role in the development and functioning of some forms of Aboriginal self-government (Lee 1996). This does pose some problems, however. For instance, the Saskatoon First Peoples Urban Circle stated in 1993 that Aboriginal residents of Saskatoon were more likely to judge their leaders more harshly than members of the Aboriginal community in general (Jackson et al. 1993). Despite these limitations, the report demonstrated that 86 per cent of the respondents support self-government, although only 12 per cent would prefer a decentralized model of self-government for the city (Jackson et al. 1993).

Urban Aboriginal self-government is a complex issue, which is affected by various policy objectives such as land claims agreements. Durst (1999) found that the primary impact of First Nation land claims on Canadian urban municipalities was the emergence of Aboriginal self-government. He went on to state that self-government negotiations cannot be done in secret, urban councils are not third parties, direct negotiations are important, taxation is a key issue, and local agreements require effective enforcement mechanisms.

This view was echoed by the Native Council of Canada (1993), who concluded following a survey of 1300 Canadian Native city dwellers, that all Canadians should be informed of the scope and responsibilities of self-government, that city-wide authorities was well as neighbourhood majority models should be developed and that the full participation of Aboriginal peoples be guaranteed. Harding (1994) stresses that we not forget that urban Aboriginal people often view this population as a community unto itself and in need of a self-governing body.

The NCC also indicated that the inherent right to self-government exists in section 35(1) of the Constitution Act, 1982, and that this should be the starting point for any discussion. There are those who claim that section 35(1) as it stands is flexible enough to provide for implementation of self-government (Dussault 1994), although Morse and Irwin (1993) indicate that there exists a clear recognition in legal documents that the right of self-government is inherent, although they clearly state that due
to the lack of an effective implementation strategy, the application of Aboriginal self-government, particularly in urban centres, will be contingent upon political will. The authors also suggest that the community initiative approach would be doomed to failure without federal or provincial support, and that although litigation could be viewed as an option, allowing the courts to determine the scope of self-government should be a last resort due to the degree of uncertainty (Morse & Irwin 1993).

Reeves (1986) stated that Native people should have the rights to create constitutionally-recognized societies in order to remedy the categorical discrimination that exists, that devolution of social programs take place, and that leaders consider adopting municipal status and acquire the powers required to legislate and administer by-laws, all of which could establish the foundation of self-government in Canada (also Dunn 1987; Dussault 1994). Cassidy and Bish (1989) view this path as leading bands and tribal councils toward increasing their capacity to implement federal programs at the reserve level, “which are designed and funded in a centralized fashion and are based on principles that deny the essential spirit of Indian government” (50).

Weinstein (1986) attempted to clarify the concept of Aboriginal self-determination off a land base, and to account for the utilization of section 37 of the Constitution Act, 1982. By exploring the various options for implementing self-determination off reserve, his suggestion was designed to implement a ‘bottom-up’ approach, which would require the institutions of self-government be worked out at the regional or local level before leaders consider entering into federal negotiations. This, according to the author, would demonstrate that Aboriginal governments and institutions would be capable of counteracting poverty and dependency, enhancing the ability proposed self-government designs.

In the early 1990s, the First Peoples Urban Circle formed by the Native Council of Canada and located in Ottawa conducted a number of surveys throughout Canada to determine how Aboriginal self-government could be initiated and implemented to address the concerns and needs of the urban Aboriginal population. Studies were conducted in Saskatoon (Jackson et al. 1993), Vancouver (Harris 1993), Thunder Bay (Sabourin 1993), Winnipeg (Clarkson 1993), Montreal (Vigeant 1993), and Halifax (Knockwood 1993). The studies were summarized by the Native Council of Canada (1993), in which a number of recommendations were provided, including that the federal government establish a Fiduciary Obligations Act to detail federal, provincial, municipal and Aboriginal governments; a Charter of Aboriginal Land Rights and Responsibilities be created; and that an Aboriginal land reform or banking system be
established, specifically with the National Aboriginal Land Agency, to name a few.

One major concern, which was hinted at in the final report, was how to finance self-government. Apikan (1993) concluded that the major challenge to establishing urban Aboriginal self-governance was the financing of these governments (also Boldt 1993: 223-263; Bish 1996). The author states that a new relationship with Canada would result in the country’s political leaders concluding that the costs of establishing Aboriginal self-government would be a national investment and that public financing in the beginning are approved.

There is also the concern of how to implement urban policy directives, although the National Association of Friendship Centres (1997) concluded that it was “ideally placed to assume the mantle of political leadership for a large portion of the urban Aboriginal constituency” (2). Interestingly, provincial governments “hold the pivotal role in determining the future of Aboriginal governance initiatives” (Graham 1999, 388). As well, recent judicial indications demonstrate that provincial governments may also have certain fiduciary obligations, although the scope is far from defined (Rotman 1984).

Peters (1995) suggests that non-Aboriginal governments can provide resources that facilitate consultation, consensus and community building and that financial strategies should be placed at the top of the list when it comes to what is required to establish urban Aboriginal self-government in Canada. The Urban Aboriginal Working Group (Graham et al. 1993) has developed three possible approaches to improving governance for urban Aboriginal people. These include establishing self-governing Aboriginal institutions in urban areas to be responsible for key services; promoting an Aboriginal authority that would enter into agreement with a public government; and, reforming municipal governments and other local public authorities to make them more representative to Aboriginal residents.

Despite this optimistic approach, Graham (1999) claims that the “conditions for Aboriginal people living in these areas are often difficult, a situation that elicits both despair and innovation” (also Stewart 1993, Couture & Fielding 1998). At a time when many First Nations support extending jurisdiction of land-based governments to urban citizens (Opekokew 1995), the time may be right to begin negotiations in earnest.

Recent Court Cases Affecting Aboriginal Self-Government

There is a sense of urgency attached to defining what the inherent
right to self-government is in light of ongoing negotiations which structure self-government according to federal policy which first entails surrendering Aboriginal rights and then the adoption of a municipal-style model of governance. It is awkward to be negotiating for a right that may or may not legally exist. Without this definition, the federal government is asking the First Nations to take an incredible leap of faith, especially when one stops to consider that the Supreme Court of Canada has apparently taken a wait and see approach regarding the evolution of what an inherent right is.

At the same time, self-government is viewed as underlying every other Aboriginal right, meaning that Supreme Court “acknowledgment of its existence cannot be far off” (McNeil 2001). Even so, the RCAP commissioners were clear in stating that a right cannot be recognized without a distinctive remedy available. This is not to suggest that the Supreme Court has not been involved in this definition, for despite relative inactivity on the courts part, there have been a number of recent court decisions that have addressed the criteria to be met in order for the inherent right as protected by section 35(1) is afforded.

In R. v. Van der Peet (1996) Dorothy Van der Peet was prosecuted for selling ten salmon while in possession of a license that restricted her to fishing for personal food. The appellant argued that fishing and the subsequent trading of fish in this instance was an Aboriginal right protected by section 35 of the Constitution Act. The British Columbia Provincial Court countered that Stolo trade in salmon was “incidental and occasional only” and denied the appellant’s claim (R. v. Van der Peet 1996). The court proceeded to set out the criteria for the establishment of an Aboriginal right under section 35. First, for an activity to be considered an Aboriginal right “it must be an element or a practice, custom or tradition integral to the distinctive culture claiming the right” (R. v. Van der Peet 1996: 46). Second, in order for the practice to be integral it must be a “central and significant part of the society’s distinctive culture” (pgh 55) and have developed prior to contact with Europeans (pgh 60). The criteria laid out in the Van der Peet decision are highly restrictive and consider Aboriginal rights from a very narrow perspective, meaning that “practices that have evolved since contact appear to face a decidedly uphill battle to qualify as Aboriginal rights under section 35” (Russell 2000: 81). Further, this makes it extremely difficult to predict how the Supreme Court will rule on the inherent right for a particular group and within a specified subject area.

The test laid out in Van der Peet was applied in three other cases, which have collectively come to be known as the Van der Peet trilogy (Barsh & Henderson 1997). In R. v. Smokehouse (1996), the application
of the test involved the exchange of fish between the Sheshaht and Obetchesaht people, revealing that this exchange of fish was not sufficiently central to the culture of the two groups to qualify as an Aboriginal right. Yet the same test as applied in *R. v. Gladstone* revealed that the sale of herring spawn was sufficiently central to the culture of Heiltsuk people to qualify for Constitutional protection as an Aboriginal right. The third case of the trilogy was *R. v. Pamajewon* (1996) where the First Nations of Shawanaga and Eagle Lake asserted their inherent right to self-government by passing by-laws to establish lotteries without a provincial license, disregarding outright an Indian Act provision prohibiting such actions.

Here it was contended that gambling had existed prior to extended European contact and was used for ceremony and celebration, which in this case allowed the appellants the right to operate and regulate high-stakes gambling on reserves. The case was appealed to the Supreme Court, which in turn struck down this petition, articulating that gaming was in fact not an integral part of the distinctive cultures of the Shawanaga or Eagle Lake First Nations, as such gaming is not an Aboriginal right and that on-reserve gaming facilities were not exempt from provincial legislation according to section. 35(1) (Isaac 1999: 526; 1991). This in effect created a situation of ‘permafrost rights’, where only the manner or method of exercise of the activity is permitted to evolve while the activities themselves are not (Morse 1997). This is intriguing since it has been previously emphasized that Aboriginal rights cannot be frozen or otherwise restricted to any specific mode of land use that an Aboriginal people may have engaged in at a particular point in time (Slattery 1987: 123-124).

In *R. v. Corbiere* (1999), the contention that off-reserve band members from the selection of chief and council had the effect of excluding non-residents from regional, provincial, national and international levels of First Nation’s governance, as well as from electing Chief and Council” (Assiniwi et al 2001: 10). The courts agree, stating that it was discriminatory to deny off-reserve band members the right to fully participate in band governance “on the basis of a personal characteristic and in a stereotypical way” (11). The effect of *Corbiere* is to link cultural identity to Aboriginal rights by requiring “those claiming section 35 Aboriginal rights to prove that these involve activities which are distinct and integral” to Aboriginal societies (ii), again invoking the essence of Van der Peet and limiting the definition of Aboriginal rights.

In *Pamajewon*, the Supreme Court also indicated that the Canadian Charter of Rights and Freedoms did in this case apply and could be utilized to aid the courts in similar cases. It had been suggested that the
Canadian Charter of Rights and Freedoms does not and should not apply to Aboriginal government, and that this provision should not be an issue during negotiations (McNeil 1996), or that provisions be made for Aboriginal participation in collective decision-making (Long & Chiste 1994). This would require the federal government to develop a Constitution not as a product of British origin, but rather one that recognizes the roots of Canadian history and traditions, which also acknowledges the contributions of Aboriginal peoples and their long-standing relations with the Crown (Slattery 1996; Gormley 1984). At the same time, there are those scholars who recognize that “certain congruities exist between what the Charter represents and First Nations traditions and represents an opportunity to recapture the strength of principles which were often eroded through government interference” (Borrows 1994b: 23).

Finally, the Delgamuukw decision of 1997 resulted in the courts deciding that “Aboriginal nations should be able to rely on two fundamental common law rules to meet the onus the court has placed on them: (1) title is presumed from possession; and (2) possession is title as against anyone who cannot prove that he or she has a better title” (McNeil 1999: 801). In other words, the Supreme Court of Canada clearly placed the onus on Aboriginal nations to prove their title by showing occupation of lands at the time the Crown asserted sovereignty (McNeil 1999). This is a significant decision due simply to the fact that land is the one component that is required prior to the implementation of self-governing, which in turn requires title to that property. At the same time, the Delgamuukw decision is a blow to those Aboriginal nations who may be unable for whatever reasons to prove their title and, consequently, their inherent right to govern that land base.

The First Nations Governance Initiative

In April 2001, Minister of Indian Affairs Robert Nault informed those in attendance at the Kanai High School located on the Blood Reserve in Alberta that he was instituting new legislation that would become recognized as the First Nations Governance Act (FNGA). This act over the next two years would generate significant opposition from the Assembly of First Nations (AFN) as well as other Aboriginal organizations Canada-wide.

Soon thereafter, two additional bills were tabled: Bill C-6, known as the Specific Claims Resolution Act, and Bill C-19, known as the First Nations Fiscal and Statistical Management Act. To the more pragmatic and discerning, proposing three separate pieces of legislation within such a short period of time should have immediately sent up a red flag and without delay all proposals submitted to intense scrutiny. Yet First
Nations and Aboriginal leaders and what appeared to be the majority of their constituents became immersed in debates concerning the FNGA while literally ignoring Bill C-6 and C-19.

It has only been recently that Aboriginal leaders have concentrated their efforts on examining three proposals while also engaging in educational forums. With the exception of leaders such as B.C.'s Interior Alliance spokesperson, Chief Arthur Manuel, who described the legislative package as a "gross violation of Indigenous peoples' inherent right to self-determination" and said it would accelerate the extinguishment of Aboriginal title and rights, concern that the trilogy of acts is geared more towards establishing First Nations and Aboriginal communities as municipalities as opposed to true self-governing entities has been lacking. As suggested the bulk of discussion has focused on the FNGA and completely disregarded two other significant pieces of legislation that if passed will drastically undermine the current land claims process and establish greater government control over on-reserve economic development, respectively.

Briefly, Bill C-6 provides that the Commission will be responsible for administering funding for a First Nation to research, prepare and conduct its claim(s); assisting the parties to use dispute resolution processes at any time to resolve specific claims; and for referring issues of validity or compensation to the Tribunal (clause 23). In carrying out these responsibilities, the Commission "may" establish rules of procedure for specific claims, not including Tribunal proceedings; establish criteria for funding a First Nation to develop its claim(s), and allocate funds accordingly; arrange for research and/or studies "agreed to by the parties"; assist in the resolution of prescribed interlocutory [not final] issues; and promote the use of dispute resolution processes, including negotiation, mediation, non-binding arbitration and, if the parties consent, binding arbitration (clause 24) (Hurley 2003).

The FNGA (Bill C-7) is a complex array of criteria seemingly designed to entrench legally Canada's notion of what Aboriginal self-government represents while also providing First Nations with the tools required to improve the quality of life "in their own communities," (Canada 2003). The proposed legislation is aimed at enabling First Nations to establish leadership selection codes, to establish modern standards for financial and operational accountability vis-à-vis the bands' ability to establish financial management codes, while also providing bands the ability to tailor their governing structures to suit their needs, in addition to formally clarifying the legal capacity of bands, the scope of their law making powers and improved capacity to enforce band laws. Notably absent from the proposed legislation was the issue of status and band
membership, First Nations women’s concerns relating to land, the delivery of programs and services and broad review of the Indian Act (Hurley 2002).

Finally, Bill C-19 calls for the implementation of an institutional framework to provide First Nations with the ability to address on-reserve economic development and fiscal issues. The goal is to enable First Nations governments to generate their own financing through property tax and borrowing regimes. The proposed financial institutions are as follows: 1) First Nations Finance Authority (FNFA), which would allow First Nations to collectively issue bonds and raise long-term private capital at preferred rates for roads, water, sewer and other infrastructure projects; 2) The First Nations Tax Commission (FNTC), developed to replace the Indian Taxation Advisory Board and to assume and streamline the real property tax by-law approval process and help reconcile community and ratepayer interests; 3) The First Nations Financial Management Board (FMB), created to establish financial standards and provide the independent and professional assessment services required for entry into the FNFA borrowing pool; and, 4) The First Nations Statistical Institute (FNSI), formulated to assist all First Nations in meeting their local data needs while encouraging participation in, and use of, the integrated national systems of Statistics Canada.

In all, “the initiative would target mechanisms aimed at enhancing First Nations’ fund-raising capacity through taxation of leasehold interests on reserve lands and access to more affordable, long-term loans for community development. Unlike the federal government’s proposed First Nations Governance Act (Bill C-7), which would apply to all First Nations in Canada, the proposed fiscal institutions legislation is intended to be opt-in.”

It is generally accepted as of this writing that Paul Martin will succeed Prime Minister Jean Chretien in early 2004. Martin has made it clear to the press and various First Nations leaders that he will officially repeal the FNGA upon his ascension to power. Nevertheless, the lesson learned from this most recent attempt to establish greater legislative control over Canada’s First Nations is revealing for even though each piece of legislation appears to be an independent bill, to the critical reader it appears as though the government’s perception of Aboriginal self-government is not tied to land or the inherent right to self-government, but reflects a more rigid understanding that Aboriginal self-government is a direct result of legislation formulated to streamline the existing process.

There is also concern that establishing more government agencies to streamline the existing fiscal relationship vests with Canada increased
controlling interest over on-reserve issues. Once again, self-government is being dictated; also, self-governing bodies do not appear to be vested with the ability or trust to obtain the capacity to become fiscally responsible. This proposed legislative triumvirate indicates also that Aboriginal people are being given just generations to develop more accountable governing structures, even though Canadians, relying upon European historical precedent, had centuries to tweak governing structures that at this point appear stable and fully operational. The three proposed bills appear to have been established to work in concert with one another in order to expedite establishment of a self-governing model that can easily be applied across the board to all First Nations in Canada while simultaneously diminishing the existing fiduciary relationship.

Finally, it is important to note that the term First Nations has replaced Aboriginal in legislation as it pertains to self-government in Canada. Currently Liberal policy views the existing inherent right to self-government applying to Aboriginal people; the FNGA limits self-government to First Nations, a legal classification that has the potential to discount a number of Aboriginal communities not including Métis and Inuit communities, the latter two of which are also Aboriginal peoples according to section 35(1).

Conclusion

The Hon. Thomas Berger wrote in 1983, “It is my conviction that if, in working out a settlement of Native claims, we try and force Native social and economic development into moulds that we have cast, the whole process will be a failure (374; cf Macklem 1991, Borrows 2002). The literature shows however that there has been a consistent attempt to fit Aboriginal government into a pre-determined mould.

What strikes one the most in reading the literature over the last thirty years is the sheer determination of Aboriginal peoples to consistently, continually and with clarity, cohesiveness and cogency, advance their ideas about self government. To move from a policy of termination to a policy of affirmation of the inherent right of self government is remarkable and is indeed the work of a ‘forceful and articulate Indian leadership’, to use the words of the 1969 Statement of Indian Policy. In short, there is a history of the idea of Aboriginal self-governance as it has emerged from the shadows over the last thirty years that needs to be further expanded upon.

The literature produced about Aboriginal self-government during the past three decades also has been greater than anticipated and comes from a variety of sources. Academic analyses of self-government in journals and monographs, position papers created by tribal councils, fed-
eral government policy papers and positions, proposals and responses from Aboriginal political organizations all provide an excellent cross-section of some of the more innovative and influential works written about self-government during this period. More importantly, much of this foundational work has been written by Aboriginal authors and emphasizing an Aboriginal perspective regarding what direction this process should take has in many ways led to the current movement toward self-government. The literature shows a clear and consistent Indigenous political philosophy, grounded in traditional Aboriginal ideas about political relationships, that has driven the development of the self-government agenda from the Aboriginal side of the discussion.

There has been a consistent desire to create healthy and stable governments that in turn could take a lead role in fostering community well-being. The link between governance and community well-being is strongly captured by many leaders comments. Indeed, the literature argues that an important part of community well-being is the building healthy relationships with the world around the community, an idea consistent with Indigenous political philosophies. The literature outlines the nature of the relationship desired, the ways in which the relationship would be renewed and formalized and the broad outlines of governing structures.

The literature also documents the machinery of Aboriginal governments, such as how Aboriginal governments are evolving within communities in practise. Cultural politics, as viewed through the lens of the Aboriginal self-government movement, develop to defend or reinstate endangered preferred ways of living. This has been an historic reality among Aboriginal leaders who early on interwove two forms of politics: the leadership's popular struggle against Canadian nationalist aspirations and the logic of the adaptive struggle that takes place in multiple political arenas represented by the Aboriginal communities.

These forms of political activism were an early attempt to represent a constituency that lacks formal representation in order to convey their message. Culturally diverse societies such as Canada have a complex array of politically charged interest groups, yet subordinate classes must be persuaded to accept values and opinions consistent with those of the ruling class in order to maintain its hegemony (Abercrombie, Hill, and Turner 1980). Accordingly, the economically dominant class, represented in this case by the Canadian state, require hegemony to rule (Gramsci 1971). This suggests that an ideology emerged within Canada that was considered favourable to the dominant class from which a conception of the general interest was formed and maintained.

Hegemony is a constant process, however, that is less about the
destruction of difference than the construction of a collective will through recognition of difference (Hall 1991). Hegemony also “presupposes a space for dissent, and the accommodation and absorption of differences, in order to neutralize social conflicts” (Briones 1999, 450). This form of hegemony is based upon subtle yet pervasive forms of ideological control and manipulation by the dominant class, which must develop relationships with other classes and social forces, in all a product of politics (Golding 1992). Hegemony then comes to represent the system of values, attitudes, beliefs and morality that enables dominant Canadian society, values that are then socially internalised and recognized as ‘common sense’ further enabling the ruling elite’s beliefs and established processes to appear socially acceptable (Boggs 1976). It is this conception of civil society where hegemony is established and maintained; it is within this sphere also that Aboriginal leaders are forced to negotiate their social placement by countering the prevailing societal norms that result in the de facto removal of ‘Indians’ from society.

Our examination of the literature indicates that the study of self-government was focussed initially on generating interactive models to promote Aboriginal inclusiveness within Canadian society. To work in unison with Canadian officials was to strengthen community resolve while relying upon more traditional governing philosophies that would lead to improved socio-economic conditions. Recent trends suggest the self-government dialogue is increasingly becoming the exclusive domain of individuals who understand legal lexicon or speak the language of Constitutional politics. This discursive shift steers the discussion away from communities and community leaders rendering much of the discussion inaccessible to those who are affected by it the most. There is a need to prepare documents that bring the discussion to communities in a language that is accessible.

The review also demonstrates that the self-government movement, which began with community statements and direction and concern with community well-being, has moved away from these important sites. The conversation about Aboriginal governance has become a conversation of elites: Aboriginal, government and academic. There is a need to find ways and the means of ensuring that community direction and stewardship be regained. What one also sees from the literature is a constant desire by Aboriginal people to develop structures and processes of government that are based in Indigenous thought and that reflect Indigenous ideas of political thought. Again this has the potential to generate political stability, which can help lead to political well-being. There has been no systematic examination or recognition of these ideas, however. Research needs to be undertaken in two areas: how to create mecha-
nisms that enable these ideas to be discussed and formally examined and explored by Aboriginal communities and how to feed this research into the public policy process. Unless this happens, Indigenous thought becomes peripheral to the self-government movement while well-being becomes a latent idea to be engaged only after the governance structures are firmly in place.

This may in part be the result of narratives that establish a false dichotomy if read outside the canon of literature that recognizes Aboriginal people as active agents challenging colonial norms. Rhetoric "constantly stresses the contrasts between Aboriginal and non-Aboriginal culture values, and lifestyles puts the two sets of people into separate camps, and normally accords the moral high ground to Aboriginal peoples" (Cairns 2000: 98). This artificial dichotomy aids in the construction of "ideological walls around cultures" that "minimize points of cultural convergence" while tending "to look to the past for guidance," resulting in resistance to "accommodating change" (Cairns 2000: 99). This means of distilling history and recent events into "the simple narrative structure of a protagonist's conflict with and eventual triumph over opposing forces renders invisible the complexity of historical interactions and the diversity of social groups" (Furniss 1999: 18). It is these "multiple identities, the diverse and conflicting interests, and the ambiguities and incompleteness of domination and resistance that characterized the colonial encounter" (Ibid.).

Some recent scholarship is quick to embrace this approach. Recently University of Western Ontario political scientist Kiera Ladner (2003) published a survey article intended to illustrate the existing relationship between Aboriginal peoples and the Canadian government. Utilizing the language of oppression, domination, and genocide, Ladner concludes that Aboriginal agency dissolved following the implementation of the Indian Act in 1876. Moreover, Canada's heavy handed tactics kept Aboriginal people under lock and key on reserves; cheated them out of their title to the territory that comprises Canada's Prairie Provinces; and forced them into residential schools where physical and psychological oppression resulted in cultural genocide. Briefly acknowledging the existence of Aboriginal political organizations, the author concludes that accommodation and negotiation by these organizations represented acts of contrition perpetrated by "puppet regimes which were to aid in the goal of 'civilizing' the Indian" (47). Ladner thereby firmly establishes the Canadian government as a hegemonic entity that dictates the rules to Aboriginal leaders, and any attempt by Aboriginal leaders to interact through a negotiated framework was (and remains) to "negotiate one's inferiority" (Ladner 2001).
Throughout the article, however, Ladner fails to mention B.C. Indians’ fight for recognition of land rights that eventually resulted in Canada calling a Royal Commission to investigate the Indian land question in 1913. Also ignored are F.O. Loft’s efforts to develop a national organization during the 1920s, work that laid the foundation for the emergence of the core of modern Aboriginal organizations represented by the Assembly of Manitoba Chiefs, the Federation of Saskatchewan Indian Nations, the Union of British Columbia Indian Chiefs, the Union of Ontario Indians, and the Assembly of First Nations. In fact, any organizing effort that occurred prior to 1969 is ignored outright illustrating a refusal on Ladner’s part to accept the polarizing nature of Canadian Indian policy. This is a trap that many academics are unable or for that matter unwilling to avoid; however the resulting scholarly work situates Aboriginal society opposite that of Canadian society. Framed this way, there is little room for hybrid or shared space which further suggests that there is no room for reconciliation (Russell 2001).

The available literature on Aboriginal/Canadian interaction does not demonstrate the situation to be as dire or polarized as Ladner and other scholars would lead us to believe generally exists in Canada (e.g. Cook-Lynn 2001, Churchill 1997, Monture-Angus 1997). Moreover, the extant literature about Aboriginal political organizing (comprising political biographies, personal reminiscences, historical and sociological surveys of Aboriginal political organizing, and rare works investigating the internal workings of Aboriginal organizations) demonstrates that there was indeed political activism and organizing taking place during this supposed period of Canada’s ‘political genocide’ of Aboriginal peoples. By accepting this impoverished interpretation on events is to present Aboriginal people as powerless to effect change, standing helplessly by as the forces of colonialism swept them into the political abyss.

Perhaps most importantly, this representation of Aboriginal political culture disallows cultural adjustment to emerging political and social forces. Methodologically there is a need to remain cognizant of cultural dynamics without assuming that had “Native alternatives...been heeded, things might have turned out more satisfactorily for all concerned.” This is “overly simplistic and reflective of a romantic view of Aboriginal wisdom” that has the opportunity to inhibit academic analysis (Abel 1996: 96). This can be challenging, for by “highlighting the contrasting perspectives, some historians summarily dismiss Aboriginal perspectives and choices that supported government plans” (Lackenbauer 2004: 418). In sum, studies focusing on the pre-1969 Aboriginal political organizing movement demonstrate Ladner’s (and other’s) assertions to be both naïve and erroneous.
The legacy of an Indian policy predicated on wholesale assimilation of Aboriginal people into Canada’s social fabric is difficult to overcome; maintaining a balanced approach while eschewing advocacy research is therefore an important objective. It has been pointed out that “[I]n an era of land claims, litigation over Aboriginal rights, and continued uncertainty over federal policies regarding increasingly self-governing Aboriginal communities, the politics of memory take on heightened significance” which can lead scholars “to pick sides, and most do so out of inclination or perceived obligation” (Lackenbauer 2004: 418). The result has been the emergence of a new ‘consensus’ historiography structured around “victim-survivors” of an unrelenting federal government. This narrative situates Canada as the evil colonial power and Aboriginal people as unwitting pawns unable to challenge overwhelming ideological and political forces. In particular, Smith cautions that similar “American Indian movements have been generally under-theorized and dismissed because theorists have failed to understand how movements that seem only about cultural revitalization” can have profound impacts (Smith 2002: 32).

When considering agency and the level of effort exerted by Aboriginal political actors to counter Canadian hegemony the line between ascribing too much influence to Aboriginal political leaders and perpetuating the discourse of resistance to the monolithic colonial state can become blurred. Kelm and Brownlie (1994) warn that an over-emphasis on agency and glossing “over the suffering of First Nations under wardship” provides a colonialist alibi and a skewed understanding of events and players (545). Churchill (2000: 25) is critical of this approach, suggesting that the authors “appear to miss the main points of the arguments presented—that of Aboriginal cultural institutions transforming themselves and being transformed in the process.” The goal is not to speak in terms of power relations as opposed to political action and its influence in destabilizing the popular attitudes that result in and enable hegemony. It is our hope that this essay has situated Aboriginal people as subjects of and participants in intellectual discourse about relationships between political activism and cross-cultural interaction with the Canadian state, a novel approach since Aboriginal peoples and non-Aboriginal scholars rarely see these communities as sites of intellectual discourse (Warrior 1994).

This essay began by examining literature that emerged during the 1960s, which included the commissioning of the Hawthorn Report (1963-1966) and the creation and attempted application of the White Paper in 1969. The Hawthorn Report brought to the public’s attention how poor the situation was among Aboriginal people in Canada; the White Paper served to spur Aboriginal leadership into action. Prior to the 1960s, Ab-
original self-government as a concept did not firmly exist in the minds of Canadian politicians. For the most part, Aboriginal people and the issues dominating their lives were all but invisible. Following the White Paper, Aboriginal leaders throughout Canada took it upon themselves to lead their organizations into developing position papers calling for increased decision-making powers at the reserve and community level. What followed was an examination of the Indian Association of Alberta’s Red Paper of 1970 and the Manitoba Indian Brotherhood’s release of Whabung in 1971, Aboriginal groups during the 1970s began to lay the foundation for what would become the Aboriginal political and philosophical foundation of self-government.

Following this flurry of activity, the early part of the 1980s was dominated by the government’s desire to ‘patriate’ Canada’s Constitution from Britain which was followed by intensive negotiations among provincial Premiers, the Prime Minister and Aboriginal leaders pertaining to the recognition of Aboriginal rights within the newly revised Constitution Act of 1982. The recognition of Aboriginal rights within the constitution led to claims that these rights included the right to self-government. It also led to four constitutionally mandated First Minister’s Conferences to discuss the issue of Aboriginal self-government and how it should proceed. This ground breaking work followed on the heels of Aboriginal grassroots and political organizations in the 1970s; the 1980s is unfortunately a period in which the federal government gradually took control over how self-government would evolve. In other words, the definition of self-government would now rest with the federal government after which it would be placed before Aboriginal leaders to either accept or refuse. Aboriginal leadership and stewardship over the creation of self-government was effectively wrested away.

The 1990s was a period of negotiations and academic involvement in further refining the constraints of Aboriginal self-government. With the effective establishment of state control over the definition of Aboriginal self-government in place, academics began to involve themselves in exploring what self-government was and how the Canadian state could more effectively incorporate this ideal into its political and legal regimes. The government, after much pressure, agreed that self-government was an inherent right, exhibiting an outwardly liberal approach. Unfortunately, missing from this discourse was the grassroots and political voices that were so prevalent just two decades ago in the formation of the self-government ideal.

Through a detailed examination of the literature of the period, one can see this progression of the development of Aboriginal self-government as a local political objective to the federal government and Ab-
original political elite appropriating the ideal and gaining control of its evolution. The threads of the initial discourse regarding Aboriginal self-government are woven into contemporary notions of what Aboriginal self-government now represents. The literature review also sketches the outlines of a possible history of the idea of Aboriginal self-governance as it has emerged from the shadows over the last thirty years. This is a history of the last thirty years that needs to be told in a more comprehensive way. In sum:

1. The idea of self-government has broadened considerably over the last three decades. It has grown from an initial conception as local municipal style government rooted in the Indian Act to a conception as a constitutionally protected inherent right finding its most recent expression in the idea of ‘Aboriginal national government’ as a distinct order of government within the Canadian federation.

2. The scope of people affected by the discussions has grown considerably. The initial focus of self-government was on status Indians residing on reserves. This has now broadened to include Métis, Inuit and urban Aboriginal peoples.

3. The basis of self-government has fundamentally changed. We no longer conceive of Aboriginal self-government as rooted in the Indian Act but see it as an ‘inherent’ right, rooted in history and treaties.

4. The scope of authority and jurisdiction for self-government has also enlarged considerably. Aboriginal governments are now seen as more than municipalities, also encompassing federal, provincial and municipal authorities as well as some unique Aboriginal authorities.

5. The debate about self-government has fundamentally changed. It is now about how rather than why. There are now multiple sites for the debate: among lawyers, Aboriginal leaders and academics, the literature focuses on broad issues and still has an element of why; but among local Aboriginal community leaders and politicians and consultants, it is about how to govern on a daily basis.

Aboriginal leaders have consistently attempted to get Canadian officials to revisit the foundations of the original relationship that preceded Canada as a country by some 250 years for the purposes of strengthening an already existing bond (e.g. RCAP 1996). This would ultimately result in the Canadian government recognizing that relationship; at the same time, despite historical precedent situating Aboriginal people as one of Canada’s three founding people, reliance upon history to sort out where Aboriginal people fit into the Canadian federation is at this juncture difficult. At the same time there are groups that will argue that they
are in fact not Canadian and as such placement within the federation is unwarranted; however, Borrows warns that Canada’s First Nations cannot ignore the world they live in and that in the process of “reconstructing our world we cannot just do what we want” (1994: 23).

It is also clear that the Canadian government has effectively captured the self-government agenda. Whether this situation will persist is for the time being unknown. Currently federal officials are unilaterally developing the structure of Aboriginal self-government. Nowhere is this more evident that the recently proposed First Nations Governance Act (FNGA). And although it eventually died on the order table it is a clear reminder of where Aboriginal self-government fits into the overall Canadian agenda.

Unlike its original conception in which Aboriginal self-government would acknowledge the ability of Aboriginal governments to remain and operate freely within Canada and that a mutual co-existence could evolve that would allow for effective cross-cultural interaction to occur sans interference from other parties, political or otherwise, Canada currently guides the process and appears to be continuing in attempting to ‘municipalize’ First Nations to better fit within the overall self-government matrix (Lazar 2002).

There is clearly a need to create space for Aboriginal self-government in Canada. One of the ways to engage this process is to develop a scholarship that would expand our understanding of not only what Aboriginal self-government is but to also analyse it in a way that will expand upon its varied exigencies that at the same time is informative at the community level and in Ottawa. This will involve cogent, critical and informed analysis of education, health, and economic development, as well as public administration as they apply at the community level. It is also important to examine the federal system to see where change can occur to better accommodate the evolution of Aboriginal self-government. This leads to an obvious conclusion: what is sorely missing at this stage of the debate is community-based direction into what self-government is as originally occurred in the 1970s. There is a continuing need to work together to flush out self-government’s possibilities in a way that is acceptable not only to the federal government but to the people in the communities that implementing Aboriginal self-government will directly impact.
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